

North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704  
<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor  
Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief  
Phone: (919) 855-3873  
Fax: (919) 733-8139

May 9, 2012

William R. Shenton  
PoynerSpruill  
PO Box 1801  
Raleigh, NC 27602

RE: Exempt from Review - Replacement Equipment / North Carolina Radiation Therapy Management Services, LLC / Replace linear accelerator / Buncombe County

Dear Mr. Shenton:

In response to your letter of May 4, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(7). Therefore, you may proceed to acquire, without a certificate of need, the Siemens Onco linear accelerator serial number 5205 to replace the existing Varian 2100C linear accelerator serial number 810. This determination is based on your representations that the existing unit will be removed from North Carolina and will not be used again in the State without first obtaining a certificate of need. Further, please be advised that as soon as the replacement equipment is acquired, you must provide the CON Section and the Medical Facilities Planning Section with the serial number of the new equipment to update the inventory, if not already provided. In addition, you should contact the Construction Section to determine if they have any requirements for development of the proposed project.

It should be noted that this 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 Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

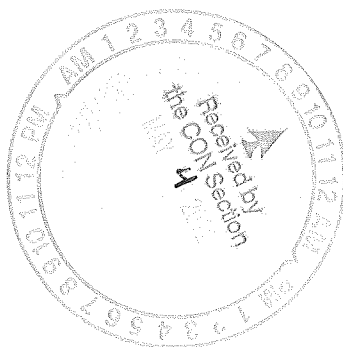
Sincerely,

Les Brown  
Project Analyst

Craig R. Smith, Chief  
Certificate of Need Section

cc: Construction Section, DHSR





Poyner Spruill<sup>LLP</sup>

May 4, 2012

William R. Shenton  
Partner  
D: 919.783.2947  
F: 919.783.1075  
wshenton@poynerspruill.com

**VIA HAND DELIVERY**

Mr. Les Brown  
Project Analyst  
Certificate of Need Section  
Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, North Carolina 27603

RE: Linear Accelerator Replacement Equipment Exemption Request  
N.C. Gen. Stat. § 131E-184(a)(7) and 10A NCAC 14C .0303

Dear Mr. Brown:

I am writing on behalf of our client North Carolina Radiation Therapy Management Services, LLC ("NCRTMS") which is an affiliate of Radiation Therapy Services ("RTS"), a national provider of radiation oncology services. Two companies owned by NCRTMS, AHLC, LLC and Asheville CC, LLC, are proposing to replace the linear accelerator that is located at 20 Medical Park Drive in Asheville. According to the portion of the decision by the North Carolina Court of Appeals that is attached as Exhibit 1, this linear accelerator was acquired in June of 2005. Since the total associated capital expenditures are much less than the \$2 million threshold set forth in the definition of Replacement Equipment in N.C. Gen. Stat. § 131E-176 (22a), and because this proposal also meets all the requirements in the above cited Replacement Equipment Rule, with this notice, the proposed replacement qualifies for an exemption from certificate of need review under N.C. Gen. Stat. § 131E-184(a)(7).

**BACKGROUND ON THE EXISTING LINEAR ACCELERATOR**

NCRTMS recently acquired the ownership interests in the two limited liability companies, AHLC, LLC and Asheville CC, LLC, which have owned the linear accelerator located at 20 Medical Park Drive in Asheville since it became operational. The attached letter of January 6 from Mr. Smith and Ms. Frisone confirms that the transactions in which NCRTMS acquired the ownership interests in AHLC, LLC and Asheville CC, LLC, could proceed without a certificate of need, and those transactions now are completed. As a result, NCRTMS has become the sole owner of Asheville CC, LLC and AHLC, LLC.

The existing Linac is a Varian 2100C which was reconditioned when it was placed in service in February of 2007. It uses external beam technology to focus radiation on tumor sites. AHLC, LLC and Asheville CC, LLC now propose to replace the Varian 2100C with a Siemens Oncor Expression Linear Accelerator, and the Varian 2100C will be decommissioned and transported out of state.

**BACKGROUND ON THE REPLACEMENT LINEAR ACCELERATOR**

The Varian 2100C linear accelerator will be replaced with A Siemens Oncor Expression linear accelerator that has been in service at another RTS site in Farmington Hills, Michigan. This Siemens Oncor replacement linear accelerator will be decommissioned at its Michigan site and transported to Asheville for installation at the 20 Medical Park Drive location. The Siemens Oncor machine uses the same external beam radiation therapy as the existing Varian machine; and Exhibit 2 presents a comparison of the basic features of the two machines which demonstrates that they are comparable.

Mr. Les Brown  
 May 4, 2012  
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**COMPLIANCE WITH STATUTORY REQUIREMENTS**

The CON Law defines the replacement equipment concept:

"Replacement equipment" means equipment that costs less than two million dollars (\$2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars (\$2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

This proposal meets each of the requirements set forth in the definition. The proposal involves replacement of comparable medical equipment that is currently in use, and the existing equipment will be sold or otherwise disposed of when replaced. Further, after computing the cost of all of the components set forth in the statutory definition, the entire cost falls well below the \$2,000,000 threshold. There are definite figures available for several of the cost components and reliable recent comparable expenses in other situations that can be used to project other cost components:

The current book value of the Siemens Oncor linear accelerator itself is \$660,689; and the current book value of the Treatment Planning software that will operate in conjunction with it is \$42,840. So the total cost associated directly with the equipment is \$703,529.	\$703,529
In addition, the multi-leaf collimator on the Siemens Oncor machine will be replaced at an additional cost of \$371,000, including sales tax.	\$371,000
There will be \$258,958 in construction costs associated with some modifications to the existing vault to accommodate the replacement linear accelerator.	\$258,958
The total installation cost for the Siemens Oncor machine in Asheville should not exceed \$140,000, based upon the actual cost incurred by an RTS affiliate for Siemens' installation of a Siemens Oncor machine in another state, which was accomplished at a total cost of \$136,800.	\$140,000
Recent experience also shows that even with including not only the cost of decommissioning and transporting the Siemens Oncor Linear accelerator from Michigan to Asheville but also decommissioning and transporting the existing Varian 2100C linac out of North Carolina, the total should not exceed \$ 50,000.	\$50,000

Mr. Les Brown  
 May 4, 2012  
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Finally, based on other experience, there also will be a projected total of \$16,820 in associated employee costs that are related to this activity. Some of these costs may more properly be charged as expenses of operation and maintenance, and are not capital costs at all, but they have been included in the overall estimate.	\$16,820
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**TOTAL** \$1,540,307

More detailed information is presented in Exhibit 3, and as you can see, after computing all of these costs, which include every activity that is "indispensable and requisite" to this proposal, the total still is less than \$2,000,000.

**COMPLIANCE WITH THE REPLACEMENT EQUIPMENT RULE**

This proposal also meets each of the requirements of subparts (d) and (e) of the Replacement Equipment Rule. It is clear that the Siemens Oncor linear accelerator uses fundamentally the same technology as the Varian linear accelerator, is functionally similar and will be used for the same treatment purposes. Furthermore, this replacement will occur more than three years after the acquisition of the Varian Linac. In addition, the acquisition of the replacement equipment will not result in an increase in patient charges or per-procedure operating expenses of more than 10% within the first 12 months after the Siemens Oncor linear accelerator is acquired. Thus, the replacement equipment meets each of the applicable required elements of the Replacement Equipment Rule.

**CONCLUSION**

All the costs that are required to be accounted for under the statute have been documented in the cost estimate; and this proposal also conforms with each aspect of the Replacement Equipment Rule. Therefore, this replacement of the Varian 2100C linac with the Siemens Oncor linac is exempt from certificate of need review pursuant to N.C. Gen. Stat. § 131E-184(a)(7).

Thank you for your attention to this and please advise if you have any questions or need any additional information.

Very truly yours,



**William R. Shenton**  
*Partner*

Enclosures

cc: Craig R. Smith, Section Chief (w/enclosures)  
 Martha J. Frisone, Assistant Chief (w/ enclosures)



NO. COA08-1478

NORTH CAROLINA COURT OF APPEALS

Filed: 1 June 2010

MISSION HOSPITALS, INC.,  
Petitioner,

and

NORTH CAROLINA RADIATION THERAPY  
MANAGEMENT SERVICES, INC., d/b/a  
21<sup>ST</sup> CENTURY ONCOLOGY,  
Petitioner-Intervenor,

v.

North Carolina Department of  
Health and Human Services  
No. 05 DHR 1369

NORTH CAROLINA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
DIVISION OF HEALTH SERVICE  
REGULATION (FORMERLY DIVISION  
OF FACILITY SERVICES[)],  
CERTIFICATE OF NEED SECTION,  
Respondent,

and

ASHEVILLE HEMATOLOGY AND  
ONCOLOGY ASSOCIATES, P.A.,  
Respondent-Intervenor.

Appeal by Petitioners from the final agency decision signed 30  
May 2008 by Jeff Horton, Acting Director for the North Carolina  
Department of Health and Human Services, Division of Health Service  
Regulation. Heard in the Court of Appeals 8 June 2009.

*Smith Moore Leatherwood LLP, by Maureen Demarest Murray and  
Allyson Jones Labban, for Petitioner.*

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.,  
by Susan H. Hargrove, Sean A. Timmons, and Courtney H.  
Mischen, for Petitioner-Intervenor.*

*Attorney General Roy Cooper, by Assistant Attorney General  
June S. Ferrell, for Respondent.*

*Bode, Call & Stroupe, L.L.P., by Robert V. Bode, S. Todd*

Agreement" ("MSA"), US Oncology "provide[s] all Management Services as are necessary and appropriate for the day-to-day administration of the business aspects of AHO's operations[.]" US Oncology's responsibilities as AHO's business manager include: (1) ordering and purchasing medical supplies for AHO; (2) repairing and maintaining AHO's office; and (3) exercising special power of attorney for various purposes including billing AHO's patients. US Oncology purchased the LINAC and CT Scanner on behalf of AHO. Unlike Thomasville's relationship with Forsyth, AHO and US Oncology enjoyed a reciprocal relationship that extended far beyond the donation of a LINAC.

Thus, we conclude that AHO acquired the LINAC and CT scanner by a "comparable arrangement" (*i.e.*, its management agreement with US Oncology) when US Oncology acquired the LINAC and CT scanner, on 3 June and 8 June 2005, respectively. Accordingly, AHO had vested rights in the equipment as of June 2005 under the prior CON Law. Furthermore, the Agency rendered its no-review decision on 2 August 2005 determining that AHO's project did not require a CON, prior to the 26 August 2005 effective date of the amendment to the CON Law. Accordingly, we hold that the prior CON Law applies to the determination of whether AHO's project requires a CON.

## *II. AHO's Acquisition of the LINAC*

The Agency found the costs "essential to acquiring and making operational" the LINAC to total \$746,416.62. N.C. Gen. Stat. § 131E-176(14f) (2003). Because the total cost of the LINAC was found to be less than the \$750,000 statutory threshold, the Agency





	EXISTING EQUIPMENT	REPLACEMENT EQUIPMENT
Type of Equipment (List Each Component)	Linear Accelerator	Linear Accelerator
Manufacturer of Equipment	Varian	Siemens
Tesla Rating for MRIs	N/A	N/A
Model Number	2100C	Oncor
Serial Number	810	5205
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	June 2005 <sup>1</sup>	May 20, 2012 <sup>2</sup>
Does Provider Hold Title to Equipment or Have a Capital Lease?	Title	Title
Specify if Equipment Was/Is New or Used When Acquired	Used	Used <sup>3</sup>
Total Capital Cost of Project (Including Construction, etc.) <Use Attached Form>	N/A	\$1,540,307
Total Cost of Equipment	\$80,000	\$1,074,529
Fair Market Value of Equipment	N/A	N/A
Net Purchase Price of Equipment	\$80,000	\$1,074,529
Locations Where Operated	20 Medical Park Dr. Asheville, NC 28803 Buncombe County	Once Installed 20 Medical Park Dr. Asheville, NC 28803 Buncombe County
Number Days in Use/To be Used in N.C. Per Year	255	255
Percent of Change in Patient Charges (by Procedure)	N/A	0%
Percent of Change in Per Procedure Operating Expenses (by Procedure)	N/A	0%
Type of Procedures Currently Performed on Existing Equipment	External Beam Radiation Therapy	N/A
Type of Procedures New Equipment is Capable of Performing	N/A	External Beam Radiation Therapy

<sup>1</sup> Date of acquisition established by N.C. Court of Appeals decision

<sup>2</sup> Date of projected transfer to Asheville from Michigan

<sup>3</sup> Previously in service at RTS site in Farmington Hills, Michigan



OVERALL  
COST  
INFORMATION

<b>North Carolina Radiation Therapy Management Services, LLC</b>	
<b>Project Cost Tracking Worksheet</b>	
<b>Project Location:</b>	<b>Asheville, NC</b>
<b>Project Description:</b>	<b>Replace Linear Accelerator</b>

**Equipment**

Siemens Oncor Expression, S/N 5205	Book Value	\$	660,689	
Treatment Planning Software	Book Value	\$	42,840	
MLC Replacement	Siemens	\$	371,000	
<b>Total Equipment - Related Costs</b>				<b>\$ 1,074,529</b>

**Other Costs**

Vendor Installation	Siemens	\$	140,000	
Rig-in and Out of Siemens and Varian Units	THIS	\$	50,000	
Construction - Linear Accelerator Vault	RTSI/NCRTMS	\$	258,958	
Staff Costs and Travel	RTSI/NCRTMS	\$	16,820	
<b>Total Other Costs</b>				<b>\$ 465,778</b>

**Total Project Costs** **\$ 1,540,307**

**PROPOSED CAPITAL COSTS**

**Project Name: North Carolina Radiation Therapy Management Services, LLC Replacement of Linear Accelerator, 20 Medical Park Drive, Asheville, NC 28803, Buncombe County**

<b>A. <u>Site Costs</u></b>			
(1)	Full purchase price of land	\$ <u>N/A</u>	
	Acres _____ Price per Acre \$ _____		
(2)	Closing costs	\$ <u>N/A</u>	
(3)	Site Inspection and Survey	\$ <u>N/A</u>	
(4)	Legal fees and subsoil investigation.	\$ <u>N/A</u>	
(5)	Site Preparation Costs		
	Soil Borings	\$ _____	
	Clearing-Earthwork	\$ _____	
	Fine Grade For Slab	\$ _____	
	Roads-Paving	\$ _____	
	Concrete Sidewalks	\$ _____	
	Water and Sewer	\$ _____	
	Footing Excavation	\$ _____	
	Footing Backfill	\$ _____	
	Termite Treatment	\$ _____	
	Other (Specify) _____	\$ _____	
	Sub-Total Site Preparation Costs	\$ <u>N/A</u>	
(6)	Other (Specify) _____	\$ <u>N/A</u>	
(7)	<b>Sub-Total Site Costs</b>		\$ <u>N/A</u>
<b>B. <u>Construction Contract</u></b>			
(8)	Cost of Materials		
	General Requirements	\$ _____	
	Concrete/Masonry	\$ _____	
	Doors & Windows/Finishes	\$ _____	
	Thermal & Moisture Protection	\$ _____	
	Equipment/Specialty Items	\$ _____	
	Mechanical/Electrical	\$ _____	
	Other (Specify) _____	\$ _____	
	Sub-Total Cost of Materials	\$ <u>N/A</u>	
(9)	Cost of Labor	\$ <u>N/A</u>	
(10)	Other (Installation Costs – Vault Improvements: Electrical, Chiller, Cabinets, Flooring, Paint)	\$ <u>258,958</u>	
(11)	<b>Sub-Total Construction Contract</b>		<b><u>\$258,958</u></b>
<b>C. <u>Miscellaneous Project Costs</u></b>			
(12)	Building Purchase	\$ <u>N/A</u>	
(13)	Fixed Equipment Purchase/Lease	\$ <u>1,074,529*</u>	* Includes Linear Accelerator, and Computer Hardware/Software
(14)	Movable Equipment Purchase/Lease	\$ <u>N/A</u>	
(15)	Furniture	\$ <u>N/A</u>	
(16)	Landscaping	\$ <u>N/A</u>	
(17)	Consultant Fees		
	Architect and Engineering Fees	\$ _____	
	Legal Fees	\$ _____	
	Market Analysis	\$ _____	
	Other (Project Management)	\$ _____	
	Sub-Total Consultant Fees	\$ <u>N/A</u>	
(18)	Financing Costs (e.g. Bond, Loan, etc.)	\$ <u>N/A</u>	
(19)	Interest During Construction	\$ <u>N/A</u>	
(20)	Other (Rigging out, Machine Commissioning, Installation, Configuration, Staff Time & Travel, etc.)	\$ <u>206,820</u>	
(21)	<b>Sub-Total Miscellaneous</b>		<b><u>\$1,281,349</u></b>
D.	<b>Total Capital Cost of Project</b>		<b><u>\$1,540,307</u></b>

CONSTRUCTION  
COST  
BREAKDOWN

North Carolina Radiation Therapy Management Services, LLC

Project Cost Tracking Worksheet

Project Location:

Asheville, 20 Medical Park Drive

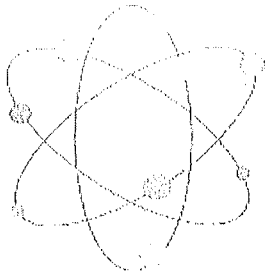
Project Description:

Construction - Linear Accelerator Vault

1	Concrete Cutting & Grout In	\$	14,500
2	Framing	\$	4,900
3	HVAC	\$	2,297
4	Electrical	\$	62,250
5	Chiller	\$	39,930
6	Plumbing	\$	4,820
7	Casework	\$	28,290
8	Flooring	\$	12,120
9	Painting	\$	3,180
<b>Subtotal:</b>		<b>\$</b>	<b>172,287</b>
	General conditions / Overhead / Profit	\$	20,671
	Contingency	\$	12,000
	Project Coordination	\$	12,000
	Executive Management	\$	6,000
<b>Total Construction Cost:</b>		<b>\$</b>	<b>222,958</b>
	Architectural & Engineering	\$	26,000
	Reimbursable Travel, Mailing, Etc.	\$	10,000
<b>Total Probable Project Cost:</b>		<b>\$</b>	<b>258,958</b>

MULTI-LEAF  
COLLIMATOR  
QUOTE





AMERICAN CONSOLIDATED TECHNOLOGIES, LLC  
 2234 COLONIAL BLVD BOX 50  
 FORT MYERS, FLORIDA 33907  
 Purchasing Dept:(239) 931-7325  
 Fx: 239-931-7349

Page: 1

PO Number: 0000000729  
 Order Date: 4/5/2012  
 Change Order:

<b>PURCHASE FROM</b>	<b>SHIP TO</b>
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SIEMENS MEDICAL SOLUTIONS USA  
 DEPT AT 40065  
 ATLANTA, GA 31192-0065 USA

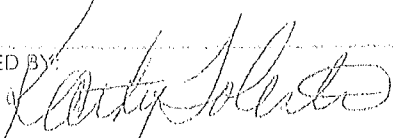
FARMINGTON HILLS CANCER CENTER  
 M.I.N.D. BUILDING #110  
 28595 ORCHARD LAKE ROAD  
 Farmington, MI 48334 USA

ATTENTION: QUOTE#1-2YVQB1

Phone: (610) 448-1613  
 Fax: (610) 448-1402

<b>BUYER</b>	<b>SHIP VIA</b>	<b>TERMS</b>
Donna Creighton	BEST WAY	30 DAYS DUE

Item / GL Account	Description	Quantity		UOM	Unit Cost	Amount
		Ordered	Rcvd			
1 MLC 16600-170-0000-23032-0000	PRIMUS AND ONCOR UPGRADES INCLUDES ALL ITEMS IN QUOTE#1-3YVQB1 TERMS 10% DOWN, 60% DELIVERY, 10% INSTALL.	1	0	Each	350,000.000	350,000.00

APPROVED BY:  DATE: APR 05 2012

Subtotal	350,000.00
Freight	0.00
Sales Tax	21,000.00
<b>Order Total</b>	<b>371,000.00</b>

# SIEMENS

Siemens Medical Solutions USA, Inc.  
51 Valley Stream Parkway, Malvern, PA 19355  
Fax: (866) 486-3602

SIEMENS REPRESENTATIVE  
Erin Rheiner - (610) 448-3510

Customer Number: 0000032855

Date: 3/19/2012

21ST CENTURY ONCOLOGY  
2234 COLONIAL BLVD  
FORT MYERS, FL 33907

Siemens Medical Solutions USA, Inc. is pleased to submit the following quotation for the products and services described herein at the stated prices and terms, subject to your acceptance of the terms and conditions on the face and back hereof, and on any attachment hereto.

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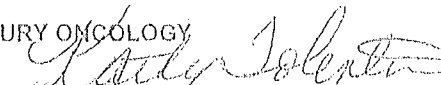
Proposal valid until 5/03/2012

Accepted and Agreed to by:

Siemens Medical Solutions USA, Inc.

By (sign): \_\_\_\_\_  
Name: Erin Rheiner  
Title: Inside Sales Exec  
Date: \_\_\_\_\_

21ST CENTURY ONCOLOGY

By (sign):   
Name: Katelyn Tolentino  
Title: Director Purchasing  
Date: 4/5/12

All pages of the signed proposal must be returned to Siemens to process the order - Thank you.

# SIEMENS

Siemens Medical Solutions USA, Inc.  
51 Valley Stream Parkway, Malvern, PA 19355  
Fax: (866) 486-3602

SIEMENS REPRESENTATIVE  
Erin Rheiner - (610) 448-3510

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Quote Nr: 1-3YVQB1 Rev. 0  
Terms of Payment: 10% Down, 80% Delivery, 10% Installation  
Free On Board: Shipping Point  
Purchasing Agreement: Not Applicable

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## PRIMUS and QNCOR Upgrades

All items listed below are included for this system:

Qty	Part No.	Item Description
1	10652175	PREF current R4.2
1	10652223	PREF Elekta Mosaic
1	10652255	PREF Control Console 12.0
1	08168457	OPTIFOCUS to 160 MLC Upgrade 160 MLC(tm) field upgrade for an ONCOR(tm) K-class linear accelerator equipped with an OPTIFOCUS(tm) MLC. 160 MLC(tm) broadens the clinical range of the linear accelerator. With mechanical and dosimetric specifications defined for stereotactic and hypofractionated treatments, it brings this high level of demands available for every-day treatments. Next to the exchange of the MLC, the upgrade also includes an upgrade to Coherence (tm) Therapist Version 2.2 to support the new 160MLC features.
1	08141793	Full Wedge System Kit, 160MLC Set of 4 hard wedges for linear accelerators equipped with the 160MLC: - Wedge angle: 15° +/- 2°, 25x30cm² field size - Wedge angle: 30° +/- 2°, 25x30cm² field size - Wedge angle: 45° +/- 2°, 25x30cm² field size - Wedge angle: 60° +/- 2°, 25x30cm² field size
1	10568261	Instal Fee 160MLC Upgrade US/CA
1	OCS_PM	OCS Project Management
		<b>System Total: \$350,000</b>

**FINANCING:** The equipment listed above may be financed through Siemens. Ask us about our full range of financial products that can be tailored to meet your business and cash flow requirements. For further information, please contact your local Sales Representative.

**ACCESSORIES:** Don't forget to ask us about our line of OEM imaging accessories to complete your purchase. All accessories can be purchased or financed as part of this order. To purchase accessories directly or to receive our accessories catalog, please call us directly at 1-888-222-9944 ext. 7 or contact your local Sales Representative.

**COMPLIANCE:** Compliance with legal and internal regulations is an integral part of all business processes at Siemens. Possible infringements can be reported to our Helpdesk "Tell us" function at [www.siemens.com/tell-us](http://www.siemens.com/tell-us).



Siemens Medical Solutions USA, Inc.  
51 Valley Stream Parkway, Malvern, PA 19355  
Fax: (866) 486-3602

SIEMENS REPRESENTATIVE  
Erin Rheiner - (610) 448-3510

## Siemens Medical Solutions USA, Inc. General Terms and Conditions

### 1. GENERAL

1.1 **Contract Terms.** These terms and conditions constitute an integral part of any contract between the Seller identified on the first page hereof to sell products ("Products") and Purchaser and shall govern the sale of the Products. Seller shall not be bound by, and specifically objects to, any terms, conditions or other provisions which are different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) which is proffered by Purchaser in any purchase order, receipt, acceptance, confirmation, correspondence or otherwise (even if provided to Seller concurrently with this Agreement), unless Seller specifically agrees to any such provision in a writing signed by Seller. Neither Seller's lack of objection to any such terms, nor delivery of the Products or provision of any services hereunder, shall constitute the agreement of Seller to any such terms. Purchaser acknowledges that this is a commercial and not a consumer transaction.

1.2 **Acceptance.** Purchaser shall be deemed to have assented to, and waived any objection to, this Agreement upon the earliest to occur of any of the following: Purchaser's completion or execution of this Agreement; Purchaser's acceptance of all or any part of the Products subject to this Agreement; Purchaser's issuance of a purchase order for any Products identified on Seller's quotation or proposal; or delivery of the Products to the common carrier for shipment pursuant hereto.

1.3 **Refurbished/Used Products.** For Products identified on the Agreement as used or refurbished Products, these Products have been previously owned and used. When delivered to Purchaser, the Products may have received mechanical, electrical and/or cosmetic reconditioning, as needed, and will comply with the manufacturer's specifications. Since pre-owned Products may be offered simultaneously to several customers, the sale of such Products to Purchaser cannot be guaranteed and is subject to continuing availability at the time Purchaser accepts Seller's offer to sell the Products. If the Products are no longer available, Seller will use its best efforts to identify other products in its inventory that may be suitable for purchase by Purchaser, and if substitute products are not acceptable to Purchaser, then Seller will cancel the order and refund to Purchaser any deposits previously paid. The warranty period for any used or refurbished Products will be separately stated on the quotation.

1.4 **Third Party Products.** If this Agreement includes the sale of third party products not manufactured by Seller, then Purchaser agrees and acknowledges that (a) Purchaser has made the selection of these products on its own, (b) the products are being acquired by Seller solely at the request of and for the benefit of Purchaser, in order to eliminate the need for Purchaser to issue a separate purchase order to the manufacturer of the products, (c) no representation, warranty or guarantee has been made by Seller with respect to the products, (d) the obligation of Purchaser to pay Seller for the products is absolute and unconditional, (e) Purchaser will assert no claim whatsoever against the Seller with respect to the products, and will look solely to the manufacturer regarding any such claims, (f) Purchaser will indemnify and hold Seller harmless from and against any and all claims, regardless of the form of action, related to, resulting from or caused by the products or any work or service provided by the manufacturer of the products or any other party, (g) use of the products may be subject to the Purchaser's agreement to comply with any software licensing terms imposed by the manufacturer, as well as any applicable laws, rule and regulations; and (h) the manufacturer, and not Seller, is solely responsible for any required installation, testing, validation, tracking, product recall, warranty service, maintenance, support, and complaint handling, as well as any other applicable FDA regulatory requirements.

### 2. PRICES

2.1 **Quotations.** Unless otherwise agreed to in writing or set forth in the quotation, all prices quoted by Seller are based on U.S. dollars, and include standard and customary packaging. F.O.B. terms are set forth in Section 6.2 hereof. Domestic prices apply only to purchasers located in, and who will use the Products in, the U.S. International prices apply to all purchasers located outside of, or who will use or ship or facilitate shipment of the Products outside of, the U.S. Unless otherwise stated, the quotation shall only be valid for forty-five (45) days from the date of the quotation.

2.2 **Delay in Acceptance of Delivery.** Should the agreed delivery date be postponed by Purchaser, Seller shall have the right to deliver to storage at Purchaser's risk and expense, and payments due upon delivery shall become due when Seller is ready to deliver.

2.3 **Escalation.** Unless otherwise agreed to in writing, except as to goods to be delivered within six (6) months of Seller's acceptance of Purchaser's order, Seller reserves the right to increase its prices to those in effect at the time of shipment.

### 3. TAXES

3.1 Any sales, use or manufacturer's tax which may be imposed upon the sale or use of Products, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and shall be paid by Purchaser. Notwithstanding the foregoing, Seller agrees to honor any valid exemption certificate provided by Purchaser.

### 4. TERMS OF PAYMENT

4.1 **Payments; Due Date.** Unless otherwise set forth in the quotation, Seller's payment terms are as follows: an initial deposit of 10% of the purchase price for each Product is due upon submission of the purchase order, an additional 80% of the purchase price is due upon delivery of each Product, and the final 10% of the purchase price is due upon completion of installation or when the Products are available for first patient use, whichever occurs first. Unless otherwise agreed, all payments other than the initial deposit are due net thirty (30) days from the date of invoice. Seller shall have no obligation to complete installation until the payment due upon delivery of the Product is received. All amounts payable pursuant to this Agreement are denominated in United States dollars, and Purchaser shall pay all such amount in lawful money of the United States. Partial shipments shall be billed as made, and payments for such shipments will be made in accordance with the foregoing payment terms. In the event that Purchaser makes any payments hereunder by credit card, Seller has the right to charge the Purchaser any credit card fees imposed on the Seller by the financial institution.

4.2 **Late Payment.** A service charge of 1% per month, not to exceed the maximum rate allowed by law, shall be made on any portion of Purchaser's outstanding balance which is not paid within thirty (30) days after invoice date, which charge shall be determined and compounded on a daily basis from the due date until the date paid. Payment of such service charge shall not excuse or cure Purchaser's breach or default for late payment. In addition, in the event that Purchaser fails to make any payment to Seller within this thirty (30) day period, including but not limited to any payment under any service contract, promissory note or other agreement with Seller, then Seller shall have no obligation to continue performance under any agreement with Purchaser.

4.3 **Payment of Lesser Amount.** If Purchaser pays, or Seller otherwise receives, a lesser amount than the full amount provided for under this Agreement, such payment or receipt shall not constitute or be construed other than as on account of the earliest amount due Seller. Seller may accept any check or payment in any amount without prejudice to Seller's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

4.4 **When Payment Due Upon Installation or Completion.** Should any terms of payment provide for either full or partial payment upon installation or completion of installation or thereafter, and the installation or completion is delayed for any reason for which Seller is not responsible, then the Products shall be deemed installed upon delivery and, if no other terms were agreed upon in writing signed by the parties, the balance of payments shall be due no later than thirty (30) days from delivery regardless of the actual installation date.

4.5 **Default/Termination.** Each of the following shall constitute an event of default under this Agreement: (i) a failure by Purchaser to make any payment due Seller within ten (10) days of receipt of notice of non-payment from Seller; (ii) a failure by Purchaser to perform any other obligation under this Agreement within thirty (30) days of receipt of notice from Seller; (iii) a default by Purchaser or any affiliate of Purchaser under any other obligation to or agreement with Seller, Siemens Financial Services, Inc. or Siemens Medical Solutions Health Services Corporation, or any assignee of the foregoing (including, but not limited to, a promissory note, lease, rental agreement, license agreement or purchase contract); or (iv) the commencement of any insolvency, bankruptcy or similar proceedings by or against the Purchaser (including any assignment by Purchaser for the benefit of creditors). Upon the occurrence of any event of default, at Seller's election: (a) the entire amount of any indebtedness and obligation due Seller under this Agreement and interest thereon shall become immediately due and payable without notice, demand, or period of grace; (b) Seller may suspend the performance of any of Seller's obligations hereunder, including, but not limited to, obligations relating to delivery, installation and warranty services; (c) Purchaser shall put Seller in possession of the Products upon demand; (d) Seller may enter any premises where the Products are located and take possession of the Products without notice or demand and without legal proceedings; (e) at the request of Seller, Purchaser shall

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assemble the Products and make them available to Seller at a place designated by Seller which is reasonable and convenient to all parties; (f) Seller may sell or otherwise dispose of all or any part of the Products and apply the proceeds thereof against any indebtedness or obligation of Purchaser under this Agreement (Purchaser agrees that a period of 10 days from the time notice is sent to Purchaser shall be a reasonable period of notification of sale or other disposition of the Products by or for Seller); (g) if this Agreement or any indebtedness or obligation of Purchaser under this Agreement is referred to an attorney for collection or realization, Purchaser shall pay to Seller all costs of collection and realization (including, without limitation, a reasonable sum for attorneys' fees, expenses of title search, all court costs and other legal expenses) incurred thereby; and (h) Purchaser shall pay any deficiency remaining after collection of or realization by Seller on the Products. In addition, Seller may terminate this Agreement upon written notice to Purchaser in the event that Purchaser is not approved for credit or upon the occurrence of any material adverse change in the financial condition or business operations of Purchaser.

**4.6 Financing.** Notwithstanding any arrangement that Purchaser may make for the financing of the purchase price of the Products, the parties agree that any such financing arrangement shall have no effect on the Purchaser's payment obligations under this Agreement, including but not limited to Sections 4.1 and 4.2 above.

## 5. EXPORT TERMS

**5.1** Unless other arrangements have been made, payment on export orders shall be made by irrevocable confirmed letter of credit, payable in U.S. dollars against Seller's invoice and standard shipping documents. Such letter of credit shall be in an amount equal to the full purchase price of the Products and shall be established in a U.S. bank acceptable to Seller. Purchaser shall procure all necessary permits and licenses for shipment and compliance with any governmental regulations concerning control of final destination of Products.

**5.2** Purchaser shall not, directly or indirectly, violate any U.S. law, regulation or treaty, or any other international treaty or agreement, relating to the export or reexport of any Product or associated technical data, to which the U.S. adheres or with which the U.S. complies. Purchaser shall defend, indemnify and hold Seller harmless from any claim, damage, liability or expense (including but not limited to reasonable attorney's fees) arising out of or in connection with any violation of the preceding sentence. If Purchaser purchases a Product at the domestic price and exports such Product, or transfers such Product to a third party for export, outside of the U.S., Purchaser shall pay to Seller the difference between the domestic price and the international retail price of such Product pursuant to the payment terms set forth herein. Purchaser shall deliver to Seller, upon Seller's request, written assurance regarding compliance with this section in form and content acceptable to Seller.

## 6. DELIVERY, RISK OF LOSS

**6.1 Delivery Date.** Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Purchaser's order by Seller. Seller shall make every reasonable effort to meet the delivery date(s) quoted or acknowledged, but shall not be liable for any failure to meet such date(s). Partial shipments may be made.

**6.2 Risk of Loss; Title Transfer.** Unless otherwise agreed to in writing, the following shall apply:

(a) For Products that do not require installation by Seller or its authorized agent or subcontractor, and for options and add-on products purchased subsequent to delivery and installation of Products purchased under this Agreement, delivery shall be complete upon transfer of possession to common carrier, F.O.B. Shipping Point, whereupon title to and all risk of loss, damage to or destruction of the Products shall pass to Purchaser.

(b) For Products that require installation by Seller or its authorized agent or subcontractor, delivery shall be complete upon delivery of the Products to Purchaser's designated site, F.O.B. Destination; title to and all risk of loss, damage to or destruction of such Products shall pass to Purchaser upon completion of the installation by Seller or its authorized agent or subcontractor.

(c) All freight charges and other transportation, packing and insurance costs, license fees, custom duties and other similar charges shall be the sole responsibility of the Purchaser unless included in the purchase price or otherwise agreed to in writing by Seller. In the event of any loss or damage to any of the Products during shipment, Seller and Purchaser shall cooperate in making a claim against the carrier.

## 7. SECURITY INTEREST/TITLING

**7.1** From the F.O.B. point, Seller shall have a purchase money security interest in the Products (and all accessories and replacements thereto and all proceeds thereof) until payment in full by Purchaser and satisfaction of all other obligations of Purchaser hereunder. Purchaser hereby (i) authorizes Seller to file (and Purchaser shall promptly execute, if requested by Seller) and (ii)

irrevocably appoints Seller its agent and attorney-in-fact to execute in the name of Purchaser and file, with such authorities and at such locations as Seller may deem appropriate, any Uniform Commercial Code financing statements with respect to the Products and/or this Agreement. Purchaser also agrees that an original or a photocopy of this Agreement (including any addenda, attachments and amendments hereto) may be filed by Seller as a Uniform Commercial Code financing statement. Purchaser further represents and covenants that (a) it will keep the Products in good order and repair until the purchase price has been paid in full, (b) it will promptly pay all taxes and assessments upon the Products or the use thereof, (c) it will not attempt to transfer any interest in the Products until the purchase price has been paid in full, and (d) it is solvent and financially capable of paying the full purchase price for the Products.

## 8. CHANGES, CANCELLATION, AND RETURN

**8.1** Orders accepted by Seller are not subject to change except upon written agreement.

**8.2** Orders accepted by Seller are noncancellable by Purchaser except upon Seller's written consent and payment by Purchaser of a cancellation charge equal to 10% of the price of the affected Products, plus any shipping, insurance, inspection and refurbishment charges; the cost of providing any training, education, site evaluation or other services; and any return, cancellation or restocking fees with respect to any Third Party Products ordered by Seller on behalf of Purchaser. Seller may retain any payments received from Purchaser up to the amount of the cancellation charge. In no event can an order be cancelled by Purchaser or Products be returned to Seller after shipment has been made.

**8.3** Seller shall have the right to change the manufacture and/or design of its Products if, in the judgment of Seller, such change does not alter the general function of the Products.

## 9. FORCE MAJEURE

**9.1** Seller will make every effort to complete shipment, and installation where indicated, but shall not be liable for any loss or damage for delay in delivery, inability to install or any other failure to perform due to causes beyond its reasonable control including, but not limited to, acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, civil commotion, blockades, embargoes, calamities, floods, fires, earthquakes, explosions, storms, strikes, lockouts, labor disputes, or unavailability of labor, raw materials, power or supplies. Should such a delay occur, Seller may reasonably extend delivery or production schedules or, at its option, cancel the order in whole or part without liability other than to return any unearned deposit or prepayment.

## 10. WARRANTY

**10.1** Seller warrants that the Products manufactured by Seller and sold hereunder shall be free from defects in material or workmanship under normal use and service for the warranty period. The final assembled Products shall be new although they may include certain used, reworked or refurbished parts and components (e.g., circuit boards) that comply with performance and reliability specifications and controls. Seller's obligation under this warranty is limited, at Seller's option, to the repair or replacement of the Product or any part thereof. Unless otherwise set forth in the Product Warranty attached hereto and incorporated herein by reference, the warranty period shall commence upon the earlier of the date that the Products have been installed in accordance with 12.6 hereof, which date shall be confirmed in writing by Seller, or first patient use, and shall continue for 12 consecutive months. Seller makes no warranty for any Products made by persons other than Seller or its affiliates, and Purchaser's sole warranty therefor, if any, is the original manufacturer's warranty, which Seller agrees to pass on to Purchaser, as applicable. The warranty provided by Seller under this Section 10 extends only to the original Purchaser, unless the Purchaser obtains the Seller's prior written consent with respect to any sale or other transfer of the Equipment during the term of the warranty.

**10.2** No warranty extended by Seller shall apply to any Products which have been damaged by fire, accident, misuse, abuse, negligence, improper application or alteration or by a force majeure occurrence as described in Section 9 hereof or by the Purchaser's failure to operate the Products in accordance with the manufacturer's instructions or to maintain the recommended operating environment and site conditions; which are defective due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Products by the Purchaser or any third party or due to the attachment and/or use of non-Seller supplied equipment, parts or software, without Seller's prior written approval; which failed due to causes from within non-Seller supplied equipment, parts or software; which have been damaged from the use of operating supplies or consumable parts not approved by Seller. In addition, no warranty extended by Seller shall apply to any transducer or probe failure due to events such as cracking from high impact drops, cable rupture from rolling equipment over the cable, or delamination from cleaning

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with inappropriate solutions. Seller's obligation under this warranty is limited to the repair or replacement, at Seller's option, of defective parts. Seller may effectuate such repair at Purchaser's facility, and Purchaser shall furnish Seller safe and sufficient access for such repair. Repair or replacement may be with parts or products that are new, used or refurbished. Repairs or replacements shall not interrupt, extend or prolong the term of the warranty. Purchaser shall, upon Seller's request, return the noncomplying Product or part to Seller with all transportation charges prepaid, but shall not return any Product or part to Seller without Seller's prior written authorization. Purchaser shall pay Seller its normal charges for service and parts for any inspection, repair or replacement that is not, in Seller's sole judgment, required by noncompliance with the warranty set forth in Section 10.1. Seller's warranty does not apply to consumable materials, disposables, supplies, accessories and collateral equipment, except as specifically stated in writing or as otherwise set forth in the Product Warranty attached hereto and incorporated herein by reference, nor to products or parts thereof supplied by Purchaser.

10.3 This warranty is made on condition that immediate written notice of any noncompliance be given to Seller and Seller's inspection reveals that the Purchaser's claim is valid under the terms of the warranty (i.e., that the noncompliance is due to traceable defects in original materials and/or workmanship).

10.4 Purchaser shall provide Seller with full and free access to the Products, network cabling and communication equipment as is reasonably necessary for Seller to provide warranty service. This access includes establishing and maintaining connectivity to the Products via VPN IPsec Tunneling (non-client) Peer-to-Peer connection, modem line, internet connection, broadband internet connection or other secure remote access reasonably required by Seller, in order for Seller to provide warranty service, including remote diagnostics, monitoring and repair services.

10.5 Warranty service will be provided without charge during Seller's regular working hours (8:30-5:00), Monday through Friday, except Seller's recognized holidays. If Purchaser requires that service be performed other than during these times, such service can be made available at an additional charge, at Seller's then current rates. The obligations of Seller described in this section are Seller's only obligations and Purchaser's sole and exclusive remedy for a breach of product warranty.

10.6 SELLER MAKES NO WARRANTY OTHER THAN THE ONE SET FORTH HEREIN AND IN THE ATTACHED PRODUCT WARRANTY COVERING THE APPLICABLE PRODUCT CATEGORY. SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSES, AND SUCH CONSTITUTES THE ONLY WARRANTY MADE WITH RESPECT TO THE PRODUCTS AND ANY DEFECT, DEFICIENCY OR NONCONFORMITY IN ANY PRODUCT, SERVICE OR OTHER ITEM FURNISHED UNDER THIS AGREEMENT.

10.7 In the event of any inconsistencies between the terms of this Section 10 and the terms of the attached Product Warranty, the terms of the attached Product Warranty shall prevail.

## 11. LIMITATION OF LIABILITY

11.1 In no event shall Seller's liability hereunder exceed the actual loss or damage sustained by Purchaser, up to the purchase price of the Products. The foregoing limitation of liability shall not apply to claims for bodily injury or damages to real property or tangible personal property arising as a result of Seller's negligence or a product defect.

11.2 SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, COST OF SUBSTITUTE PRODUCTS OR SERVICES, LOSS OF STORED, TRANSMITTED OR RECORDED DATA, OR FOR ANY INDIRECT, INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SALE OR USE OF THE PRODUCTS. THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.

## 12. INSTALLATION - ADDITIONAL CHARGES

12.1 General. Unless otherwise expressly stipulated in writing, the Products covered hereby shall be installed by and at the expense of Seller except that Seller shall not provide rigging or site preparation services unless otherwise agreed to in writing by Seller for an additional charge. Seller will not install accessory items such as cabinets, illuminators, darkroom equipment or processors for X-Ray and CT equipment, unless otherwise agreed to in writing by Seller.

12.2 Installation by Seller. If Seller specifies it will install the Products, the following applies: subject to fulfillment of the obligations set forth in 12.4 below, Seller shall install the Products covered hereby and connect same to the requisite safety switches and power lines to be installed by Purchaser. Except as otherwise specified below, if such installation and connection are performed by Seller's technical personnel, prices shown include the cost thereof, provided that the installation and connection can be performed within the Continental United States or Puerto Rico and during normal business hours. Any overtime charges or other special expenses shall be additional charges to the prices shown.

12.3 Trade Unions. In the event that a trade union, or unions, or other local labor conditions prevent Seller from performing the above work with its own employees or contractors, then Purchaser shall either make all required arrangements with the trade union, or unions, to permit Seller's completion of said work or shall provide the personnel, at Purchaser's sole cost and expense. Moreover, any additional cost incurred by Seller and related to such labor disputes shall be paid by the Purchaser and Seller's obligations under such circumstances will be limited to providing engineering supervision of installation and connection of Seller equipment to existing wiring.

12.4 Purchaser's Obligations. Purchaser shall, at its expense, provide all proper and necessary labor and materials for plumbing service, carpentry work, conduit wiring, and other preparations required for such installation and connection. All such labor and materials shall be completed and available at the time of delivery of the Products by Seller. Additionally, the Purchaser shall provide free access to the premises of installation and, if necessary, safe and secure space thereon for storage of Products and equipment prior to installation by Seller. Purchaser shall be responsible, at its sole cost and expense, for obtaining all permits, licenses and approvals required by any federal, state or local authorities in connection with the installation and operation of the Products, including but not limited to any certificate of need and zoning variances. Purchaser shall provide a suitable environment for the Products and shall ensure, at its sole cost and expense, that its premises are free of asbestos, hazardous conditions and any concealed, unknown or dangerous conditions and that all site requirements are met. Seller shall delay its work until Purchaser has completed the removal of the asbestos or other hazardous materials or has taken any other precautions and completed any other work required by applicable regulations. Purchaser shall reimburse Seller for any increased costs and expenses incurred by Seller that are the result of or are caused by any such delay. In the event that Seller is requested to supervise the installation of the Products, it remains the Purchaser's responsibility to comply with local regulations. Seller is not an architect and all drawings furnished by Seller are not construction drawings.

12.5 Regulatory Reporting. In the event that any regulatory activity is performed by other than Seller authorized personnel, Purchaser shall be responsible for fulfilling any and all reporting requirements.

12.6 Completion of Installation. Installation shall be complete upon the conclusion of final calibration and checkout under Seller's standard procedures to verify that the Products meet applicable written performance specifications. Notwithstanding the foregoing, first use of the Products by Purchaser, its agents or employees for any purpose after delivery shall constitute completion of installation.

## 13. PATENT, TRADEMARK AND OTHER INFRINGEMENT CLAIMS

13.1 Infringement by Seller. Seller warrants that the Products manufactured by Seller and sold hereunder do not infringe any U.S. patent or copyright. If Purchaser receives a claim that any such Product, or parts thereof, infringe upon the rights of others under any U.S. patent or copyright, Purchaser shall notify Seller immediately in writing. As to all infringement claims relating to Products or parts manufactured by Seller or one of its affiliates:

(a) Purchaser shall give Seller information, assistance and exclusive authority to evaluate, defend and settle such claims.

(b) Seller shall then, at its own expense, defend or settle such claims, procure for the Purchaser the right to use the Products, or remove or modify them to avoid infringement. If none of these alternatives is available on terms reasonable to Seller, then Purchaser shall return the Products to Seller and Seller shall refund to Purchaser the purchase price paid by the Purchaser less reasonable depreciation for Purchaser's use of the Products. The foregoing states Seller's entire obligation and liability, and the Purchaser's sole remedy, for claims of infringement.

13.2 Infringement by Purchaser. If some or all of the Products sold hereunder are made by Seller pursuant to drawings or specifications furnished by the Purchaser, or if Purchaser modifies or combines, operates or uses the Products other than as specified by Seller or with any product, data, software, apparatus or program not provided or approved by Seller, then the indemnity obligation of Seller under Section 13.1 shall be null and void and should a claim be made that such Products infringe the rights of any third party under patent, trademark or otherwise, then Purchaser shall indemnify and hold Seller

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harmless against any liability or expense, including reasonable attorneys' fees, incurred by Seller in connection therewith.

#### 14. DESIGNS AND TRADE SECRETS; LICENSE; CONFIDENTIALITY

14.1 Any drawings, data, designs, software programs or other technical information supplied by Seller to Purchaser in connection with the sale of the Products are not included in the sale of the Products to Purchaser, shall remain Seller's property and shall at all times be held in confidence by Purchaser. Such information shall not be reproduced or disclosed to others without Seller's prior written consent.

14.2 For all goods purchased hereunder which utilize software for their operation, such "Applications Software" shall be licensed to Purchaser under the terms of Seller's Software License Schedule as attached hereto.

14.3 Diagnostic/Maintenance Software is not included under 14.2 above, is available only as a special option under a separate Diagnostic Materials License Agreement and may be subject to a separate licensing fee.

14.4 Seller and Purchaser shall maintain the confidentiality of any information provided or disclosed to the other party relating to the business, customers and/or patients of the disclosing party, as well as this Agreement and its terms (including the pricing and other financial terms under which the Purchaser will be purchasing the Products hereunder). Each party shall use reasonable care to protect the confidentiality of the information disclosed, but no less than the degree of care it would use to protect its own confidential information, and shall only disclose the other party's confidential information to its employees and agents having a need to know this information. The obligations of confidentiality set forth herein shall not apply to any information in the public domain at the time of disclosure or that is required to be disclosed by court order or by law.

#### 15. ENGINEERING CHANGES

15.1 Seller makes no representation that engineering changes which may be announced in the future will be suitable for use on, or in connection with, the Products.

#### 16. ASSIGNMENT

16.1 Neither party may assign any rights or obligations under this Agreement without the written consent of the other and any attempt to do so shall be void, except that Seller may assign this Agreement without consent to any subsidiary or affiliated company, and may delegate to authorized subcontractors or service suppliers any work to be performed under this Agreement so long as Seller remains liable for the performance of its obligations under this Agreement. This Agreement shall inure to and be binding upon the parties and their respective successors, permitted assigns and legal representatives. Seller shall have no obligations under this Agreement to any assignee of Purchaser that is not approved by Seller in advance.

#### 17. DAMAGES, COSTS AND FEES

17.1 In the event that any dispute or difference is brought arising from or relating to this Agreement or the breach, termination or validity thereof, the prevailing party shall NOT be entitled to recover from the other party any punitive damages. The prevailing party shall be entitled to recover from the other party all reasonable attorneys' fees incurred, together with such other expenses, costs and disbursements as may be allowed by law.

#### 18. MODIFICATION

18.1 This Agreement may not be changed, modified or amended except in writing signed by duly authorized representatives of the parties.

#### 19. GOVERNING LAW; WAIVER OF JURY TRIAL

19.1 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

19.2 EACH OF THE PARTIES EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE UNDER THIS AGREEMENT.

#### 20. COST REPORTING

20.1 Purchaser agrees that it will fully and accurately account for and report in all cost reports and otherwise fully and accurately disclose to federal and state health care program payors and fully and accurately reflect where and as appropriate to the applicable reimbursement methodology, all services and other items, including any and all discounts, received from Seller under this Agreement, in compliance with all applicable laws, rules and regulations, including but not limited to the Social Security Act and implementing regulations relating to Medicare, Medicaid and other federal and state health care reimbursement programs.

#### 21. INTEGRATION

21.1 These terms and conditions, including any attachments or other documents incorporated by reference herein, constitute the entire agreement and the complete and exclusive statement of agreement with respect to the subject matter hereof, and supersede any and all prior agreements, understandings and communications between the parties with respect to the Products.

#### 22. SEVERABILITY; HEADINGS

22.1 No provision of this Agreement which may be deemed unenforceable will in any way invalidate any other portion or provision of this Agreement. Section headings are for convenience only and will have no substantive effect.

#### 23. WAIVER

23.1 No failure and no delay in exercising, on the part of any party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

#### 24. NOTICES

24.1 Any notice or other communication under this Agreement shall be deemed properly given if given in writing and delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the face hereof. Either party may from time to time change such address by giving the other party notice of such change in accordance with this section.

#### 25. RIGHTS CUMULATIVE

25.1 The rights and remedies afforded to Seller under this Agreement are in addition to, and do not in anyway limit, any other rights or remedies afforded to Seller by any other agreement, by law or otherwise.

#### 26. END USER CERTIFICATION

26.1 Purchaser represents, warrants and covenants that it is acquiring the Products for its own end use and not for reselling, leasing or transferring to a third party (except for lease-back financings).



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## Software License Schedule to the Siemens Medical Solutions USA, Inc. General Terms and Conditions

### 1. DEFINITIONS: The following definitions apply to this Schedule:

"Agreement" shall mean the attached (i) Quotation for Products and/or Services including the Terms and Conditions of Sale and applicable schedules; and/or (ii) Software License Agreement describing the software licensed herein and the specific system for which the license is issued.

"Licensor" shall mean Siemens Medical Solutions USA, Inc.

"Licensee" shall mean the end-user to whom Licensor provides Software and Documentation for its internal use under the Agreement.

"Software" shall mean the software described in the attached Agreement, including the following as contained therein: (i) software programs consisting of a series of statements or instructions to be used directly or indirectly in a programmable controller or computer to bring about a certain result and (ii) databases consisting of systemized collections of data to be used or referenced directly or indirectly by a programmed controller or computer. Notwithstanding the foregoing, "Software" does not include "firmware" as such term is conventionally understood. Diagnostic/Maintenance Software also is not included within the scope of the Software licensed under this Schedule, and is available only as a special option under a separate Diagnostic Materials License Agreement and may be subject to a separate licensing fee.

"Documentation" shall mean the documents and other supporting materials which are intended to support the use of an associated product, including (but not limited to) instructions, descriptions, flow charts, logic diagrams and listings of the Software, in text or graphic form, on machine readable or printed media.

"Designated Unit" shall mean a single control unit or computer identified on the first page of the Agreement, on which Software licensed hereunder may be used by Licensee.

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Revised 03/15/05

**SIEMENS**

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51 Valley Stream Parkway, Malvern, PA 19355  
Fax: (866) 486-3602

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## OCS Warranty Information

<u>Product</u>	<u>Period of Warranty<sup>1</sup></u>	<u>Coverage</u>	
OCS System	12 month	Full Warranty (parts & labor)	
Including Items listed below:			
Siemens Operating System Software	First 12 Months	Includes all updates & upgrades	
Waveguide <sup>2</sup>	First 12 months	Included in system warranty	
Magnetron and Thyatron	First 12 months	Included in system warranty	
Klystron (only original one, not replacement Klystron)	First 12 months	Included in system warranty	
RF Driver Mevatron/Primus	First 12 months	Parts only	
Consumables	Not covered		
<u>Post-Warranty (after expiration of system warranty)</u>			
Waveguide <sup>2</sup>	Month 13 through 36 Prorated Months 37 through 120 <sup>2</sup>	Parts only; No Labor Prorated credit given to customer against replacement cost, parts only	Credit percentage = (120 - months in use) / 120 * 100
Magnetron and Thyatron	Month 13 through 18; Prorated to a maximum of 3,000 filament hours whichever occurs first	Prorated credit given to customer against replacement cost, parts only	Credit percentage = (3,000 -- filament hours used)/3,000 * 100
Klystron	Month 13 through 24, limited to a maximum of 4,000 filament hours	Prorated credit given to customer against replacement cost, parts only	Credit percentage = (15,000 -- filament hours used)/15,000 * 100
	Month 25 through 60; prorated to a maximum of 15,000 filament hours	Prorated credit given to customer against replacement cost, parts only	Credit percentage = (15,000 -- filament hours used)/15,000 * 100
RF Driver Mevatron/Primus	Prorated Month 13 through 36	Prorated credit given to customer against replacement cost, parts only	Credit percentage = (36 - months in use) / 36 * 100
Pulse Tank Primus	First 24 months Prorated Month 25 through 60	Parts only Prorated credit given to customer against replacement cost, parts only	Credit percentage = (60 - months in use) / 60 * 100

Note: Optional extended warranty coverage can be obtained by purchase of a service agreement.

<sup>1</sup> Period of warranty commences from the date of first use or completion of installation, whichever occurs first. In the event the completion of installation is delayed for reasons beyond Siemens' control, the stated warranty period shall commence 60 days after delivery of equipment.

<sup>2</sup> 10-year Waveguide warranty is only in effect for Waveguides manufactured after October 1994.



North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Certificate of Need Section  
2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Beverly Eaves Perdue, Governor  
Lanier M. Cansler, Secretary

[www.ncdhhs.gov/dhsh](http://www.ncdhhs.gov/dhsh)

Craig R. Smith, Section Chief  
Phone: 919-855-3875  
Fax: 919-733-8139

January 6, 2012

William R. Shenton  
Poyner Spruill  
P.O. Box 1801  
Raleigh, NC 27602-1801

RE: No Review:

- Transfer by Cancer Centers of North Carolina – Asheville, P.C. (CCNC Asheville) of 100% of its ownership interests in the existing oncology treatment center located at 20 Medical Park Drive, Asheville (Oncology Center) to AHLC, LLC, a wholly-owned subsidiary of CCNC Asheville
- Transfer by AOR Management Company of Virginia, LLC (AOR) of 100% of its ownership interests in the Oncology Center to Asheville CC, LLC, a wholly-owned subsidiary of AOR
- Acquisition of 100% of AHLC, LLC by North Carolina Radiation Therapy Management Services, LLC (NCRRTMS)
- Acquisition of 100% of Asheville CC, LLC by NCRRTMS  
Buncombe County

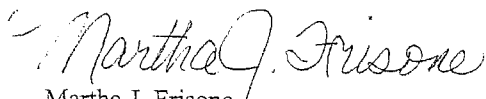
Dear Mr. Shenton:


The Certificate of Need (CON) Section received your letter of September 26, 2011 and an email dated December 28, 2011 regarding the above referenced proposals. Based on the CON law in effect on the date of this response to your request, the proposals described in your correspondence are not governed by, and therefore, do not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposals would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposals when the new law becomes effective.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the proposals or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a proposal include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D.# (FID) if the facility is licensed.

Sincerely,

  
Martha J. Frisone  
Assistant Chief

  
Craig R. Smith, Chief  
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR

