



## TERMS OF USE & LICENSE AGREEMENT

These Terms of Use & License Agreement apply to the Customer's use of the Product. By accessing, downloading, or using the Product the Customer agrees and submits to this Agreement and to any other documents incorporated by reference in this Agreement. Any use (including for a Trial Period) by the Customer of the Product is strictly subject to this Agreement.

### 1. DEFINITIONS

**"Affiliate"** means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of more than fifty percent (50%) of the outstanding capital stock or other equity interests having ordinary voting power.

**"Agreement"** means this Terms of Use & License Agreement together any other agreement or work order (or similar) signed by the Customer and Resonance, and the Documents including the FerriSmart User Guide applicable to the Product.

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in Western Australia.

**"Clinical Diagnosis"** means the acts of performing clinical diagnostic analysis of a Patient Report and providing medical advice and services to the Patient (directly or indirectly).

**"Commencement Date"** means the date on which the Customer first accesses, downloads, or uses the Product or the date that the Parties sign an agreement work order or similar regarding the Customer's use of the Product, whatever is the earlier.

**"Confidential Information"** means (a) any information relating to Patients including Patient Data, Patient Reports and Personal Data; (b) the Intellectual Property Rights, know-how, methodology, trade secrets, processes, sequences, structure and organization of Resonance; and (c) any information, which by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to Resonance.

**"Customer"** means a Person that has contracted with Resonance for the use of the Product.

**"Documentation"** means the technical publications prepared and delivered to the Customer by Resonance or Siemens relating to the use of the Product as amended from time to time, including the FerriSmart User Guide.

**"FerriSmart SI"** means the AI product owned by Resonance and available on the Siemens Ecosystem Platform that utilizes machine-learning to measure the proton transverse relaxation rate (R2) for the accurate measurement of iron concentration in the human liver through the analysis of MRI Scanner images.

**"GDPR"** means the General Data Protection Regulation 2016/679 being a regulation in EU law on data protection and privacy for all individuals within the European Union and the European Economic Area (EEA) including the export of personal data outside the EU/EEA.

**"Governmental Approval"** means any permit, authorization, registration, consent, action, waiver, exception, variance, order, judgment, decree, license, exemption, publication, filing, notice to, declaration of or with, or required by any Governmental Authority or law.

**"Governmental Authority"** means a federal, state, tribal, local, or municipal government body; and any governmental, Regulatory Body, or administrative agency, commission, body, agency, instrumentality, or other authority exercising or entitled to exercise an executive, judicial, legislative, administrative, regulatory, or taxing authority or power, including a court or other tribunal.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996 (USA).

**"Intellectual Property Rights"** means all intellectual property rights throughout the world including, without limitation, copyright (both present and future), trademarks, designs, patents, know-how, trade-secrets, codes (including source codes), software, and inventions.

**"License"** means the license(s) granted to the Customer under this Agreement by Resonance for the limited, non-exclusive, personal, and revocable use of the Product for the Trial Period or the Subscription Period.

**“License Fee”** means the fee to be paid for the grant of the License by Resonance to the Customer, and in the absence of which no License is or shall be granted other than a for the Trial Period.

**“License Key”** means a code used to activate and/or deactivate access to FerriSmart SI via *syngo.via*.

**“Non-Income Tax”** means any Tax, including but not limited to any transfer, sales, use, transaction, value added or other goods and services, conveyance, stamp or recording Tax or duties and any similar Taxes, fees or charges, including any interest, penalty or addition thereto, whether disputed or not, but excluding any Taxes of Australia that are imposed upon or measured by overall net income or any similar taxes imposed by Australia or any political subdivision of Australia in lieu of such net income taxes.

**“Party”** means Resonance or the Customer and **“Parties”** means Resonance and the Customer, collectively.

**“Patient”** means a person who is to undergo or has undergone Scanning or is being treated by the Customer and in respect of whom the Customer utilizes the Product.

**“Patient Data”** means Scanner images of a Patient's liver to enable the provision of a Patient Report generated by the Product in respect of that Patient.

**“Patient Report”** means a FerriSmart SI report of the level of iron concentration in a Patient's liver, or any other Patient report generated by the Product through the application of Patient Data.

**“Person”** means any individual, corporation, partnership, limited liability company, entity, other business organization of any kind, association, trust, or governmental entity, agency or instrumentality.

**“Personal Data”** means any information relating to an identified or identifiable natural person such as name, date of birth, address, an identification number or medical history.

**“Phantom”** means an inert and stable sample used by the Customer to verify and monitoring a Scanner (e.g. a saline bag or test subject).

**“Privacy Legislation”** means the Privacy Act 1988 (Australia) as well as any relevant privacy legislation in the jurisdiction of the Customer.

**“Product”** means FerriSmart SI, Patient Reports, and the Documentation.

**“Regulatory Body”** means the U.S. Food and Drug Administration (“FDA”), the Australian Therapeutic Goods Administration (“TGA”), the European Economic Area CE Mark (“CE Mark”), or similar Government Authority that regulates medical device goods or services.

**“Resonance”** means Resonance Health Analysis Services Pty Ltd (ACN 092 813 244) an Australian company with its office at 141 Burswood Road, Burswood, Western Australia 6100, and its Affiliates.

**“Resonance Intellectual Property”** means all the Intellectual Property Rights in or relating to the Product and any materials associated with or arising from the Product including the FerriSmart User Guide.

**“Requirements”** means the software necessary for the use of the Product and includes without limitation *syngo.via*.

**“Scanner”** means a machine for the purpose of magnetic resonance imaging (“MRI”) and **“Scanning”** means the acts of procuring Patient Data by means of a Scanner.

**“FerriSmart User Guide”** means the user guide consisting of technical specifications, protocols, practices and procedures, applicable to the Product issued by Resonance or its channel partner, and as amended by Resonance from time to time.

**“Siemens”** means Siemens Healthcare GmbH.

**“Solution Store”** means the online store for the third-party application products, operated by Siemens and/or its Affiliates.

**“Subscription Period”** means the period of License subscription agreed in writing by the Parties and being for a maximum of one year, for which the License Fee is payable by the Customer to Resonance.

**“Suspension”** means the suspension of the Customer's use of the Product by Resonance's revocation of the License Key.

**“Tax” or “Taxes”** means any commonwealth, federal, state or local, license, payroll, employment, excise, stamp, customs, profits, withholding, unemployment, disability, sales, transactional, use, transfer, registration, goods and services, value added, estimated, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

**“Termination Date”** means the date of termination of this Agreement.

**“Trial Period”** means the period of up to 90 days during which the Customer may be granted a License by Resonance to trial the Product for internal use by the Customer for the purpose of assessing its suitability for use by the Customer for Clinical Diagnosis without the application of the License Fee.

**“Update”** means an updated or amended version of the Product.

**“Verification Data”** means the Scanner images that the Customer produces of the Phantom (i.e. saline bag or test patient) as required as part of the Scanner verification process.

## **2. TERM**

The term of this Agreement will commence on the Commencement Date and shall continue until the Termination Date. The Product will be available during the Term commencing from when the Customer first accesses, downloads or uses the Product, including for use during a Trial Period.

## **3. GRANT OF LICENSE**

### **3.1 Trial Period**

Resonance grants the Customer a time-limited (up to 90 days), non-exclusive, non-sublicensable, and non-transferable, right to use the Product for internal use for the purpose of assessing its suitability for use by the Customer, without the application of a License Fee, in accordance with the Documentation, in order to test and evaluate the suitability of the Product for use by the Customer for Clinical Diagnosis, in strict accordance with this Agreement, and subject to any other limitations that may be agreed between the Parties. At the conclusion of the Trial Period the Customer will; (i) stop using the Product and permanently delete it and all Documentation from its systems and records, or (ii) enter into a written agreement or work order with Resonance with respect to, among other things, an agreed Subscription Period and Subscription Fee, for the continued use of the Product.

### **3.2 Subscription Period**

Subject to the Parties entering into a written agreement with respect to, among other things, an agreed Subscription Period and Subscription Fee, and subject to Resonance’s receipt of the Subscription Fee, Resonance grants the Customer a time-limited, non-exclusive, non-sublicensable, and non-transferable, right to use the Product for Clinical Diagnosis and commercial purposes, in accordance with the Documentation and this Agreement, subject to any other limitations that may be agreed between the Parties. At the conclusion of the initial Subscription Period the Customer will; (i) stop using the Product and permanently delete it and all Documentation from its systems and records, or (ii) enter into a written agreement or work order with Resonance with respect to, among other things, a new or renewed Subscription Period and Subscription Fee, for the continued use of the Product.

### **3.3 Updates**

Resonance may from time to time in its sole discretion develop and provide Updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features. Updates may also modify or delete in their entirety certain features and functionality. Customer agrees that Resonance has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Once an Update becomes available and unless automatically downloaded, the Customer shall promptly download and install all Updates and acknowledge and agree that the Product or portions of it may not properly operate should the Customer fail to do so. The Customer agrees that all Updates will be deemed part of the Product and be subject to all terms and conditions of this Agreement.

## **4. OBLIGATIONS OF THE CUSTOMER**

### **4.1 Use of the Product**

This Agreement permits use of the Product for the purposes of trialing (as per 3.1 above), or Clinical Diagnosis only. The Customer is prohibited from using the Product (and/or Patient Reports) to (i) reverse assemble, reverse compile, decode, reverse engineer, or otherwise translate the Product or Patient Reports or attempt to gain access to source code, of any Resonance Intellectual Property (ii) develop Scanner based products that compete with the Product or other Resonance Intellectual Property, including without limitation the calibration of any Scanner or technology (except as expressly permitted under this Agreement) (iii) modify, adapt or otherwise create

derivative works or improvements, whether or not patentable, of the Product (iv) sell Patient Reports or Documents or to disclose them to any other Person, other than a Patient. The Customer shall ensure that its use of the Product and Patient Reports will not subject Resonance, Siemens or any third party to liability.

#### **4.2 Scanner Verification**

The Customer shall enable its Scanner to reliably produce the Patient Data required for the Product by correctly setting up the FerriSmart scanning protocol on the Scanner. The customer will then acquire images of test subject data, or saline bag data using the FerriSmart scanning protocol and check Scanner images to ensure that the Verification Data provided by the Scanner is within the specifications applicable to the Product. FerriSmart SI will perform verification check of the Customer's Scanner, including the analysis of Validation Data, test subject data, or saline bag data, as required by Resonance, that has been acquired in accordance with the FerriSmart User Guide applicable to the Product.

#### **4.3 Security**

Without prejudice to Resonance's responsibility for the conformance of the Product and other agreed services, the Customer shall ensure that its use of the Product and other services will not: (i) constitute a threat to the security or functionality of any Person's systems or the Products to be provided by Resonance under the Agreement; (ii) adversely impact any Person, and in particular, without limitation, not present any risk of personal injury. The Customer shall inform Resonance promptly: (i) if it becomes aware of any circumstances indicating that the Product or any agreed services may (a) constitute a threat to the security or functionality of any Person's system, (b) adversely impact any Person and in particular, without limitation, present any risk of personal injury; and (ii) about any measures of authorities or court decisions which may possibly hinder use of the Product or any agreed services.

#### **4.4 Scanning and Clinical Diagnosis, and Maintenance Obligations**

The Customer shall during the Term:

- (a) conduct all Scanning in accordance with the Documentation and FerriSmart User Guide;
- (b) conduct Scanning and Clinical Diagnosis in accordance with applicable laws, regulations, guidelines and protocols;
- (c) comply with all laws governing the protection and privacy of Personal Data and Patient Data and consent;
- (d) be solely responsible for keeping itself informed of, and fully ensuring compliance with, the Documentation;
- (e) ensure that its employees, contractors and agents involved in Scanning and Clinical Diagnosis understand and give effect to the Documentation, the FerriSmart User Guide, and the obligations of the Customer under this Agreement;
- (f) maintain the verification of the Scanner images at all times so that it is consistent with the verifications required for the Product;
- (g) re-verify the Scanner after making any alteration to it that could affect its functioning, including but not limited to hardware and software upgrades; and
- (h) ensure that Patient Reports are communicated appropriately to the referring clinician or doctor in a timely manner.

### **5 OBLIGATIONS & RIGHTS OF RESONANCE**

#### **5.1 Right to Monitor**

Resonance or its representative may monitor usage of the Product (e.g. number of users etc.), for Resonance's and Siemens' business purposes, and in particular: (i) for security and availability reasons, (ii) to the extent required to ensure compliance with this Agreement, (iii) to detect, prevent, and suspend any use of the Product exceeding the permitted use under the License, to charge the Customer for excess use, and otherwise as necessary for payment and billing related tasks; and (iv) to provide the Customer with reports regarding its use of the Product.

#### **5.2 Obligation & Right to Update and/or change Requirements**

Resonance may change and/or issue additional Requirements or Updates at any time by notifying the Customer. Resonance will endeavor to maintain the Product's compatibility with the previous Requirements for twelve months following the date of the notice to Customer, and will endeavor to notify the Customer six months before the Product becomes incompatible with the previous Requirements. If the Customer is unable to maintain compatibility because of an Update, the Customer will be entitled to terminate the Agreement as soon as it is no longer able to use the Product due to the change to and/or issuance of the additional Requirements and/or Update.

### **6 CONFIDENTIALITY & SCOPE OF USE OF PROTECTED HEALTH INFORMATION - PRIVACY ACT (AUST), GDPR (EEA) & HIPAA (USA)**

The Customer must not disclose any Confidential Information to any Person other than to the Patient and the Patient's medical advisors as reasonably necessary for the provision of Scanning and Clinical Diagnosis. Each Party will hold Confidential Information in the strictest confidence and will not disclose Confidential Information to any Person without the express written consent of the other, except as

permitted under this Agreement. The Customer agrees to keep confidential all Personal Data, Patient Data and Patient Reports. This clause does not prohibit any disclosure required by law or by any court order or otherwise permitted under applicable law. The Parties agree to conform to and be bound by the requirements of any applicable law pertaining to privacy or security of Patient Data and Personal Data, including without limitation, GDPR, HIPAA, and the Privacy Act. The Parties agree to conform to and abide by relevant Privacy Legislation and the Data Privacy Terms.

## **7 PAYMENT OF LICENSE FEE**

### **6.1 Responsible Payer**

If someone other than the Customer is responsible for payment of the License Fee to Resonance, the Customer and the responsible payer must complete and sign a Responsible Payer Agreement which is available on request from Resonance. If a Responsible Payer Agreement has been completed and signed, the obligations to pay under this Agreement apply to the Responsible Payer and not the Customer.

### **6.2 Payment of Fees and Costs**

The Customer or Responsible Payer must pay Resonance the License Fee in advance and any other agreed associated costs. Payment of the License Fee shall be consideration for the grant of the License. The Customer or Responsible Payer is required to pay the License Fee upon receipt of an invoice from Resonance. All payments must be made by electronic fund transfer (or may be made by check, in the case of US Customers) to the account designated by Resonance on the invoice. Fees charged by Customer's or Responsible Payer's bank are to be borne by Customer or Responsible Payer. A License Key will only be provided to the Customer upon Resonance's receipt of full payment of the License Fee (other than with respect to the Trial Period).

### **6.3 Taxes**

The License Fee and any other amounts payable under this Agreement are exclusive of and payable by Customer to Resonance without reduction for any Non-Income Taxes that are imposed in connection with the Product. If Resonance becomes liable to pay any Non-Income Tax imposed in connection with the Product then, in addition to the fees and any other amounts payable pursuant to this Agreement the Customer/Responsible Payer shall: (a) Pay to Resonance an amount equal to that Non-Income Tax; and (b) Make that payment at the same time and in the same manner as the Customer/Responsible Payer is required to pay the related fee or other amount payable pursuant to this Agreement. For Customers who, and the provision of Services which, are subject to the Australian GST regime the fee referred to in the Agreement is exclusive of GST and the Customer/Responsible Payer must pay GST as required by this clause. If Resonance becomes liable to pay GST in relation to any taxable supply made under this Agreement to the Customer then in addition to the GST Exclusive Fee the Customer (or as applicable, the Responsible Payer) must: (a) Pay to Resonance an amount equal to that GST; (b) Make that payment at the same time and in the same manner as the GST Exclusive Fee is to be paid provided that Resonance issues a valid tax invoice to the Customer.

## **7 REPRESENTATIONS AND WARRANTIES**

### **7.1 Customer Representations and Warranties**

The Customer represents and warrants as follows:

- (a) that it has obtained all Governmental Approvals required to conduct the Scanning and Clinical Diagnosis and perform its obligations hereunder and that it will maintain all such Governmental Approvals in effect throughout the Term; and
- (b) that the Scanning and Clinical Diagnosis will be conducted in accordance with all applicable laws, regulations, guidelines and protocols, including but not limited to, the FerriSmart User Guide (if applicable), as well as all laws governing the protection and privacy of Personal Data, including the Privacy Act, GDPR and HIPAA.

Further, Customer based in US jurisdiction will not counsel activity that violates US state or federal law, including prohibitions against fraud and kickbacks and other prohibited activities (including, in the USA as set forth at 42 C.F.R. § 1001.951 et. seq.)

### **7.2 Resonance Representations and Warranties**

Resonance represents and warrants that it will use commercially reasonable efforts to maintain in effect all Governmental Approvals required to provide the Product. Other than that, except to the extent that any warranty is imposed by Government Authority and cannot be excluded or disclaimed, Resonance gives no other, and expressly disclaims any other, representation or warranty of any kind whatsoever, either express or implied, as to any matter concerning the Patient Reports, or the Product.

For services related to US Customers, Resonance represents and warrants to the Customer that Resonance and no personnel providing services to Customer under this Agreement, as applicable, have been placed on the sanctions list issued by the Office of the Inspector

General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. § 1320a-7, have not been excluded from government contracts by the General Services Administration (“GSA”) and have not been convicted of a felony or any crime relating to healthcare. Further, if during any term of this Agreement, Resonance is placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, Resonance will notify the Customer of the event and such notice shall contain reasonably sufficient information to allow the Customer to determine the nature of the sanction, exclusion or conviction. The Customer will have the right to terminate this Agreement immediately by written notice to Resonance if Resonance is placed on the sanctions list, banned from government contracts by GSA or convicted of a felony or any crime relating to healthcare. Further, Resonance will not counsel activity that violates US state or federal law, including prohibitions against fraud and kickbacks and other prohibited activities as set forth at 42 C.F.R. § 1001.951 et. seq.

### **7.3 Intent of the Parties/Fair Market Value**

In determining the amounts to be paid under this Agreement, the Parties have not taken into account the volume or value of referrals or business generated between the Parties which is reimbursed under Medicare, Medicaid or any private health insurance. Each Party agrees that the compensation for the License(s) provided under this Agreement is reflective of fair market value and is a result of a bona fide and arms-length negotiation.

## **8 EVENTS OF DEFAULT**

The occurrence of any one or more of the following events with respect to a Party (or the Responsible Payer, if applicable) is a default hereunder (“Default”):

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice from the other Party;
- (b) the failure of any representation or warranty made by such Party herein to be true and correct in all material respects when made or when deemed made if such failure is not remedied within ten (10) Business Days after written notice;
- (c) the failure to perform any material covenant or obligation of such Party set forth in this Agreement (except to the extent constituting a separate Default), if such failure is not remedied within ten (10) Business Days after written notice;
- (d) such Party becomes Bankrupt or becomes or threatens to become, party to any form of insolvency administration; or
- (e) the Customer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement.

## **9 TERMINATION**

On termination of this Agreement for any reason whatsoever, each Party will be regarded as discharged from any further obligations under this Agreement except the Customer’s obligations; (a) to pay for any outstanding License Fee up to the Termination Date, and (b) where a clause of this agreement states or implies otherwise. The termination of this Agreement will not affect the rights of either Party in respect of any antecedent breach of this Agreement, or in respect of any indemnity.

For Subscription Licenses this Agreement shall automatically expire upon the first anniversary. Thereafter, the Subscription License shall only be renewed in accordance with what has been agreed upon in the ordering documents.

Resonance is entitled to immediate Suspension, in whole or in part, if according to Resonance’s reasonable judgement there is a risk that Customer’s use of the Product will (i) threaten the security or functionality of the Customer’s systems; (ii) adversely impact any Person including, without limitation, any risk of personal injury, or (iii) subject any Person to liability. In addition, Resonance is entitled to Suspension, if, (i) according to Resonance’s reasonable judgment, Customer’s use of the Product or any other agreed upon service, may not comply with this Agreement; (ii) payment owed under the Agreement owed by Customer is overdue by more than thirty (30) days; (iii) Suspension is required by law, a court decision, or a request from a governmental body; (iv) for security or compliance reasons or requests from a governmental body, Customer’s access to the Solution Store has been suspended or Customer’s Solution Store Agreement has been terminated by Siemens; or (v) Siemens has suspended its services to Resonance under the Product Provider Agreement or terminated the Product Provided Agreement, rendering the continued provision of the Product or any other agreed services by Resonance impossible or unreasonable. Resonance shall inform the Customer at its earliest convenience about any such Suspension. Customer acknowledges that the entitlement to Suspension under this paragraph sentence 1, and sentence 2 item (iii) extends to Siemens at Siemen’s reasonable judgement.

Events that entitle Resonance to terminate the Agreement for cause include, without limitation: (i) acts or omissions by Customer that entitle Resonance to a Suspension for a continuous period of at least thirty (30) days; (ii) Customer’s breach of any obligation or provision of the Agreement which remains uncured for a period of thirty (30) days after receipt of notice hereof; (iii) a material breach of the obligations under the Agreement by Customer; (iv) Resonance’s obligation to comply with applicable laws or requests by a governmental body, rendering the continued provision of the Product or any other agreed services by Resonance impossible or unreasonable; (v) the

termination of Resonance's Product Provider Agreement, rendering the continued provision of the Product or any other agreed services by Resonance impossible or unreasonable.

Customer may terminate this Agreement at any time by destroying any Licensed Material in its possession or by returning the Licensed Material and any copies or extracts therefrom to Resonance. No refund of any amount paid will be made, except as granted in accordance with the 'Warranty' clause in this Agreement.

When the License expires or is terminated by Resonance, (i) the Customer must immediately stop using the Product, (ii) the Product will automatically become non-functional, and (iii) all rights granted hereby shall terminate immediately.

If the Customer fails to comply with the terms and conditions and in particular if the Customer does use the Product for purposes that are explicitly excluded in this Agreement, Customer shall pay to Resonance any resulting additional License Fee and reimburse Resonance for any and all costs related thereto. Notwithstanding the foregoing, Resonance may also assert any other claims or rights arising from an unauthorized use of the Product by the Customer.

## **10 INTELLECTUAL PROPERTY**

The Customer acknowledges and agrees that the Product and Documentation are proprietary products of Resonance and that all right, title and interest in and to the Product and Documents, and their associated Intellectual Property Rights, are and shall remain the exclusive property of Resonance, whether or not specifically recognized or perfected under the laws of the country where the Product is located or used. This Agreement does not convey to the Customer any interest in or to the Product, but only a limited right of use, revocable in accordance with this Agreement. Resonance reserves and shall retain its entire right, title, and interest in and to the Product and Documentation and the Resonance Intellectual Property, including all copyrights, trademarks, and other Intellectual Property Rights therein or relating thereto, except as expressly granted to the Customer in this Agreement. The Customer acknowledges and agrees that it has no right, title or interest of any kind or nature whatsoever in the Product or Documentation, except for the limited License to use the Product granted under this Agreement. The Customer agrees to take no action that will or may jeopardize or negatively affect the IPR or Resonance.

The Customer absolutely and unconditionally assigns, and must procure that applicable Customer personnel assign, to Resonance immediately upon creation all Intellectual Property Rights that contravene any part of clause 4.1 of this Agreement, in all tangible and intangible information, documents, software, reports, data, inventions, processes, products and other materials in any media developed, created, written or otherwise brought into existence by or on behalf of the Customer using or with the benefit of any Resonance Intellectual Property ("**Developed Material**"). This assignment operates as an assignment of future Intellectual Property Rights to the extent that the Developed Material is not in existence as at the date of this Agreement. As further steps, the Customer will: (a) promptly execute all documents and do all things that Resonance from time to time reasonably requires of it; and (b) procure its Affiliates to execute all documents and do all things that Resonance from time to time reasonably requires of those Affiliates, to give effect to the assignment in this clause and to perform its obligations under it.

## **11 RELATIONSHIP BETWEEN THE PARTIES**

Resonance and the Customer enter into this Agreement as independent contractors and nothing in this Agreement creates a relationship of employer and employee, principal and agent, joint venture or partnership between the Parties. Each agreement between Customer and Resonance on a specific product or service requires a separate agreement for the use of such product. The Customer acknowledges that: (i) it will enter into any agreements regarding its use of Resonance's Products with Resonance; (ii) Siemens or its Affiliates will not enter nor be deemed to have entered into any contractual relationships with Customer in connection with Customer's use of Resonance's Products and any of Resonance's other services; (iii) Resonance will provide the use of a Product and any of Resonance's other services to Customer in Resonance's own name and for Resonance's own account; (iv) Resonance is entitled to engage Siemens and/or its Affiliates as subcontractor in the fulfilment of Resonance's obligations under the Agreement with Customer (in which case they will act as Resonance's vicarious agent) and to authorize them to directly or indirectly exercise rights under the Agreement in relationship to Customer; and (v) even if Siemens and/or its Affiliates provide services or assert rights as per item (iv) in relation to the Agreement, they will not provide any services to Customer and will not assume any obligations or responsibilities towards Customer with regard to or in connection with Customer's use of the Product or any other services under the Agreement. Resonance may engage its Affiliates and any other business partners, including Siemens and its Affiliates, for and in connection with the provision of the Product and any other agreed services under the Agreement as our vicarious agents. Customer agrees to provide all reasonable cooperation required by Resonance should it become necessary or desirable for Resonance to use a new or different business partner.

## **12 FORCE MAJEURE**

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement (other than an obligation to pay money), and such Party (the "Affected Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (but not later than 24 hours thereafter to the extent such details are then available) then the Affected Party shall

be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance of its obligations prior to the Force Majeure) so long as the Affected Party shall be using all reasonable efforts to overcome the Force Majeure and resume performance as soon as possible. Notwithstanding its use of all reasonable efforts to overcome a Force Majeure to resume performance as soon as possible, if and to the extent an Affected Party shall not overcome such Force Majeure and resume performance of its obligations under this Agreement within one (1) month after such performance is interrupted, either Party may terminate this Agreement upon ten (10) days' written notice to the other Party without any further obligation (other than the obligation to make payment in respect of performance rendered prior to such termination).

### **13 WAIVER**

The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

### **14 SEVERABILITY**

Any provision in this Agreement that may be invalid or unenforceable in any applicable jurisdiction is to be interpreted in such manner for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, but if such provision is held to be invalid or unenforceable under applicable law of such jurisdiction, then such provision shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **15 LIABILITY**

#### **15.1 General**

The Product is distributed and provided "AS IS" and with no warranties of any kind, whether express, implied, statutory or otherwise, including, without limitation, any warranty of merchantability or fitness for a particular purpose. Resonance does not warrant, guarantee, nor makes any representations regarding the use of, or the results of the use of the Product. Resonance does not warrant that the operation of the Product will be uninterrupted or error-free.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL RESONANCE, ITS AFFILIATES, OR ANY OF ITS RESONANCES, DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE TO THE CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY DAMAGES FOR DOWNTIME, LOSS OF DATA OR INFORMATION, ARISING OUT OF (1) THE USE OR INABILITY TO USE THE PRODUCT OR (2) THE FAILURE TO RESPECT ITS SUGGESTIONS OR RECOMMENDATIONS CONCERNING THE PRODUCT OR (3) THE COMPUTER'S, THE INTERNET'S OR ANY OTHER NETWORK'S FAILURE TO OPERATE, WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR RESONANCE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RESONANCE'S ENTIRE LIABILITY FOR ANY DIRECT DAMAGES BASED ON ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION WILL BE LIMITED TO THE TOTAL AMOUNTS WHICH THE CUSTOMER HAS PAID FOR THE PRODUCT HEREUNDER.

No Party will be liable to the other Party or any other Person for any loss, damage, payment, cost, expense or other liability not expressly provided for in this Agreement. No Party shall be liable to the other Party or any other Person for consequential, indirect, punitive, incidental or special damages, including damages for lost revenues, income or profits, except in respect of the breach of clauses 4 or 10 by the Customer. Notwithstanding anything else in this Agreement, neither the Customer or Resonance shall be liable to pay any Person or Persons in the aggregate more than US\$5 million on account of or in respect of any damages, costs, expenses or other compensation of whatever nature, except in respect of the breach of clauses 4 or 10 by the Customer. Nothing in this clause shall apply to or detract from the Customer's obligations and liability under the indemnity provisions of this Agreement.

Each Party expressly acknowledges that damages alone may be an inadequate remedy for any breach or violation of any of the provisions of this Agreement, and each further agrees that the other Party, in addition to all other remedies hereunder, shall be entitled as a matter of right, to injunctive relief, including specific performance, with respect to any such breach or violation, in any court of competent jurisdiction. If any of the provisions are held to be in any respect an unreasonable restriction upon either party to whom such provision otherwise would apply, then such provision shall be deemed to extend only over the maximum period of time, geographic area, and/or range of activities as to which it otherwise would be enforceable.

#### **15.2 Indemnities regarding Scanning and Clinical Diagnosis**

Customer shall indemnify and defend Resonance and hold Resonance, and its Affiliates, board members, officers, employees, and agents harmless and Siemens will be entitled to claim from the Customer that the Customer will indemnify Siemens and its Affiliates and hold them harmless from and against any and all losses claims, damages, costs, interest, awards, penalties, fines, costs, or expenses of whatever

kind (including reasonable legal fees) arising out of or in connection with a breach of the Agreement or applicable law, including without limitation, export control law, by Customer.

Notwithstanding any other clause of this Agreement or any law, the Customer accepts full liability as between Customer and Resonance for all Scanning and Clinical Diagnosis performed by or under the supervision of Customer, and shall indemnify and hold harmless Resonance against any and all liabilities or losses, expenses, damages or costs (including legal fees and expenses) sustained or incurred by Resonance as a result of:

- (a) any claim by a Patient or a Patient's medical advisors or any Person claiming through any of them, to the extent such claim results from or arises out of the Scanning and Clinical Diagnosis (or any portion thereof) performed by or under the supervision of the Customer, in accordance with the FerriSmart User Guide and Resonance's instructions; or
- (b) any use of the Service or Patient Reports in breach of clauses 4 or 10.

### **15.3 Limited Warranty**

Resonance warrants, for Customer's benefit alone, for a period of ninety (90) days from the commencement of the initial Subscription Period (hereinafter referred to as the "Warranty Period") the Product shall operate substantially in accordance with the functional specifications in the Documentation. If during the Warranty Period, it appears that any part of the Product does not function in accordance with its specifications, Customer may return the Products and Documents to Resonance for replacement or refund of amounts paid under this Agreement, at the Customer's choice. Customer agrees that the foregoing constitutes its sole and exclusive remedy for breach by Resonance of warranties made under this Agreement.

EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, THE LICENSED MATERIAL, AND THE PRODUCT CONTAINED THEREIN, ARE LICENSED "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, RESONANCE ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITATION TO THE FOREGOING, RESONANCE PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE PRODUCT WILL MEET LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

### **16 NOTICES**

For the purpose of this clause the address, e-mail address and fax number of Resonance is as set forth below or another address, e-mail address or facsimile number of which Resonance may from time to time give Notice to the Customer:

Attention: Chief Executive Officer  
Address: 141 Burswood Road  
Burswood 6100  
Western Australia  
Telephone: +61 8 9286 5300  
Facsimile: +61 8 9286 5399  
E-mail: [info@resonancehealth.com](mailto:info@resonancehealth.com)

### **17 NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement will confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

### **18 INTERPRETATION**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) a reference to any statute, regulation, proclamation, ordinance, by-law or guideline includes all statutes, regulations, proclamations, ordinances, by-laws or guidelines varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws or guidelines issued under that statute;
- (b) words importing the singular include the plural and vice versa and reference to one gender includes all genders;
- (c) a reference to a document or agreement including this Agreement and any FerriSmart User Guide includes a reference to that document or agreement as amended, supplemented, varied or replaced from time to time;

- (d) any reference herein to any Person includes its successors and permitted assigns and, in the case of any Government Authority, any Person succeeding to its functions and capacities;
- (e) the term "including" when used in this Agreement means "including without limitation";
- (f) a reference to a document or agreement, including this Agreement, includes all annexes thereto; and
- (g) the words "hereof," "hereunder," "herein," "herewith," and "hereto," and similar words refer to this Agreement as a whole and not to any particular clause in this Agreement.
- (h) Any reference to one of the Parties herein shall be deemed to refer to each Affiliate of such Party, and that the rights and obligations of either Party shall be deemed to pertain to, and be binding upon, each such Affiliate;
- (i) Each Party's undertakings regarding the use and dissemination of third party Confidential Information is made and intended for the benefit not only of the other Party, but also its affiliates that provide such Confidential Information;
- (j) If the day on or by which a Person must do something under this Agreement is not a Business Day; (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and (b) in any other case, the Person must do it on or by the previous Business Day.

## **19 SURVIVAL**

The covenants and agreements set forth in this Agreement shall survive any expiration or termination of this Agreement indefinitely.

## **20 GOVERNING LAW**

This Agreement shall be governed and construed in accordance with the laws of Western Australia. Any dispute arising out of or in connection with this Agreement shall be heard and adjudicated by the courts of Western Australia and the Parties hereby submit to the courts of Western Australia for such hearing or adjudication.