

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of: Trademark Application with Serial Number 78743112 for the mark VVI in the United States:

-----	:	
VVI	:	
	:	Plaintiff,
v.	:	Opposition No. 91178890
Siemens Medical Solutions USA, Inc.,	:	
Defendant.	:	
-----	:	

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**REQUEST TO EXTEND THE DISCOVERY PERIOD**

Plaintiff (VVI ® ) respectfully request that the Trademark Trial and Appeal Board (the "Board") extend for at least 2 months the discovery period based on Chapter 400 TBMP §403.04 ; Extensions of Discovery Period and/or Time to Respond to Discovery Requests:

*At the same time, a party which receives discovery requests early in the discovery period may not, by delaying its response thereto, or by responding improperly so that its adversary is forced to file a motion to compel discovery, rob its adversary of the opportunity to take "follow-up" discovery. Such a delay or improper response constitutes good cause for an extension of the discovery period. Therefore, the Board will, at the request of the propounding party, extend the discovery period (at least for the propounding party) so as to restore that amount of time which would have remained in the discovery period had the discovery responses been made in a timely and proper fashion.*



**08-12-2008**

and also to a lesser extent Chapter 400 TBMP §404.07(e)(2). In particular, to restore that amount of time which would have remained in the discovery period had the discovery responses (See “Notice Of Discovery Deposition”, dated 5/8/2008) been processed and made in a timely and proper fashion by Defendant. Depending on accounting, a response from Defendant was due on about 6/8/2008 which is approximately 2 months ago. Thus Plaintiff requests an extension of at least 2 months pursuant to §403.04 and §404.07(e)(2).

Plaintiff submits the following:

1. That Plaintiff is substantially prejudiced by the delay in Defendant’s responses.
2. That Defendant has proposed “Applicant’s Request for Withdrawal of Application” with consent of Plaintiff and that Plaintiff has given every opportunity for Defendant to do so with a negotiated consent, however Defendant has squandered the opportunity by not responding in a timely way (See Exhibits 1, 2, 3). It is that squandering of that opportunity, as well as lack of progress on the discovery deposition, that leads to this motion. In addition, Defendant does not need consent from Plaintiff to withdraw, nor does it need consent to fulfill the initial obligations of the deposition, and can do either at any time.

3. That Plaintiff gave Defendant cautioning about lack of response and that Plaintiff suggested to Defendant that Defendant file “Motion To Extend Time To Answer” with the Board, but that Defendant refused to do so (See Exhibit 4).
4. That Plaintiff told Defendant that Plaintiff would file “Motion To Compel Discovery” (See Exhibit 5). However, upon further consideration and the rule of the TBMP that Plaintiff should make good faith effort before filing such a motion, Plaintiff chooses, in addition to other efforts, restraint and patience as a good faith effort. That effort has not prevailed as of yet, hence this motion.
5. That to Plaintiff’s knowledge, Defendant has not enacted even one step in the process of deposition upon written questions. That is: Defendant has not objected to any questions of the deposition, has not designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may state, for each person designated, the matters on which he or she will testify. Nor has Defendant demonstrated that it is prepared, or has prepared, to answer even one question of the written deposition. Nor has Defendant demonstrated that it can do those things in a cooperative and efficient way. Instead, when Plaintiff contacted Defendant 30 days after Notice Of Deposition to find the status of answering the questions, Defendant

redirected to withdraw application (see section 2 above). Defendant also suggested that the deposition be done as an interrogatory, to which Plaintiff stated that would be possible but with concerns as to if it would produce the same results. Defendant also had a few other questions, however it was the lack of cooperation of Defendant and Defendant's unpreparedness to take the questions seriously that causes the most immediate concerns. Defendant has had the questions for some time and there are many ways to answer them, or withdraw, however Defendant has not taken any initiative on its own to complete any.

6. That Plaintiff's opposition not only includes "likelihood of confusion", but also fraud and bad-faith filing of Defendant's application. In order to give importance to this request to extend the discovery period, Plaintiff submits one sample of exhibit from the referenced deposition, as permitted by the TBMP when filing a subsequent related motion. Exhibit 6 shows a complete sales quote from Defendant for Defendant's VVI product. That sales quote shows Defendant selling VVI and describing VVI feature as software only, not sold as a component of ultrasound equipment and explicitly stating that VVI is an "offline" tool (Exhibit 6, Page 2). Offline in this context has the explicit

technical definition of “*without ultrasound equipment*”. That is in direct contradiction with Defendant’s trademark filing which states “*sold as a component of ultrasound equipment*”. It is hypothesized that in order to rectify the initial finding of “likelihood of confusion” by the examining attorney, the Defendant changed its application to make it appear to the USPTO that VVI is sold as a component of ultrasound equipment, when in fact Defendant unequivocally states exactly the opposite in practice. As this is a very serious matter that can include criminal wrongdoing and possible prison penalties (18 U.S.C. §1001), it is important that the Defendant be given ample time and opportunity to address this issue in the discovery process, which is the intended consequence of this request to extend the discovery period.

Because of the aforementioned and the policy of law to decide cases on their merits, Plaintiff requests that it be permitted time, and cooperation of Defendant, for discovery. It is with equanimity and also high regard for the Board that Plaintiff makes this request.

Respectfully submitted,



Ed VanVliet  
VVI  
311 Adams Avenue  
State College, PA 16803  
814-441-0165

Date: August 6, 2008

Attachments:

- (1) Exhibit 1: Defendant's email stating desire to withdraw.
- (2) Exhibit 2: Defendant's proposed motion to withdrawal
- (3) Exhibit 3: Plaintiff's proposed negotiated consent.
- (4) Exhibit 4: Plaintiff's email suggesting Defendant file motion to extend time to answer.
- (5) Exhibit 5: Plaintiff's email indicating it will file motion to compel discovery.
- (6) Exhibit 6: Sales quote from Defendant for VVI software.
- (7) Certificate Of Mailing
- (8) Certificate Of Service

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

on August 6, 2008.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ed VanVliet', written in a cursive style.

Ed VanVliet  
VVI  
311 Adams Avenue  
State College, PA 16803  
814-441-0165

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing REQUEST TO EXTEND THE DISCOVERY PERIOD has been served on Siemens Medical Solutions USA, Inc. by mailing said copy on August 6, 2008 via First Class Mail, postage prepaid to:

Siemens Medical Solutions USA, Inc.  
c/o Lawrence E. Abelman  
Abelman, Frayne & Schwab  
666 Third Avenue  
New York, NY 10017

Respectfully,

A handwritten signature in black ink, appearing to read 'Ed VanVliet', written in a cursive style.

Ed VanVliet  
VVI  
311 Adams Avenue  
State College, PA 16803  
814-441-0165

**Exhibit 1; Page 1/1 ; Opposition No. 91178890 ; VVI vs Siemens Medical Solutions USA, Inc. ; Offered by VVI.**

From: "MASTROVITO, M." <MAMastrovito@lawabel.com>  
Subject: **VVI Opposition**  
Date: June 11, 2008 2:25:34 PM EDT  
To: <ed@vvi.com>  
> 1 Attachment, 129 KB

Dear Mr. Van Vliet:

Further to our telephone conversation yesterday, attached is a copy of "Applicant's Request for Withdrawal of Application." If you indicate your consent to the withdrawal by signing the second page of this paper where indicated under "Opposer's Consent to Withdrawal," we will file this today. This will at least resolve the VVI issue. The paper can be returned to us by e-mail or facsimile (212 949 9190).

Please let me know if you have any questions regarding the form we have prepared.

We are hoping that this can be put on record today, however, if you are not able to return the paper to us today, will you consent to put on hold our time to respond to discovery as it is not likely to be necessary in view of the withdrawal?

We look forward to hearing from you.

Sincerely,

MARIE-ANNE MASTROVITO

ABELMAN FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017-5612

Direct Telephone: (212) 885-9248  
Facsimile: (212) 949-9190

This is a PRIVATE and PRIVILEGED communication. If you are not the intended recipient, please do not read, copy or use it, and do not disclose it to others. Please notify the sender of the delivery error by replying to this message, and delete it from your system. Thank you.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter Of: Trademark Application No. 78/743112 for the mark VVI in the United States

<hr/>		:
VVI		:
		:
	Opposer,	:
		:
	v.	:
		:
SIEMENS MEDICAL SOLUTIONS USA INC.,		:
		:
	Applicant.	:
<hr/>		:

Opp. No. 91178890

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT'S REQUEST FOR WITHDRAWAL OF APPLICATION**

Applicant, Siemens Medical Solutions USA, Inc., hereby abandons Application Serial No. 78/743112 without prejudice.

Opposer's consent to the withdrawal of the application is attached.

Respectfully submitted,

Date: June 11, 2008

  
 LAWRENCE E. ABELMAN  
 MARIE-ANNE MASTROVITO

ABELMAN, FRAYNE & SCHWAB  
666 THIRD AVENUE  
NEW YORK, NEW YORK 10017  
(212) 949-9022

*Attorneys for Applicant,  
Siemens Medical Solutions USA, Inc.*

**OPPOSER'S CONSENT TO WITHDRAWAL**

Opposer, VVI, hereby consents to the withdrawal of Application No. 78/743112.

VVI

---

**By: Ed VanVliet**

Date: June 11, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **APPLICANT'S REQUEST FOR  
WITHDRAWAL OF APPLICATION** was served by first class mail, postage prepaid,  
this 11<sup>TH</sup> day of June, 2008 upon Opposer's representative:

Ed VanVliet  
President  
VVI  
311 Adams Avenue  
State College, PA 16803

  
MARIE-ANNE MASTROVITO

## **PLAINTIFF'S CONSENT TO WITHDRAWAL**

This Stipulations of Withdrawal of Application With Consent Agreement (the "Agreement") is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_ 2008, by and between \_\_\_\_\_ (hereinafter referred to as Defendant) having principal place of business at \_\_\_\_\_ (Defendant location) and VVimaging, Inc. (dba: VVI), (hereinafter referred to as Plaintiff), a Pennsylvania corporation, having principal place of business at 311 Adams Ave. State College, PA 16803.

STIPULATION COVENANTS: Defendant has stated Defendant is no longer interested in acquiring the mark VVI and Defendant wishes to file a Motion of "Applicant's Request For Withdrawal Of Application", of Application with serial number 78743112 for opposition proceedings with number 91178890, with consent of Plaintiff. In view of the foregoing and the consideration of consent to be provided to Defendant, Defendant agrees that it is reasonable and necessary that Defendant makes the following covenants regarding Defendant's conduct. Defendant hereby agrees that:

1. Defendant shall not submit any other application to the USPTO for the mark VVI in any form in regards to Application's description, namely as an abbreviation to Velocity Vector Imaging and matters thereof.
2. Defendant shall not use the mark VVI in any form in commerce in regards to Application's description, namely as an abbreviation to Velocity Vector Imaging and matters thereof nor shall brand the mark VVI for similar use.
3. Defendant shall expunge its current and past use of the mark VVI in commerce as it pertains to those matters in Application's description, namely as an abbreviation to Velocity Vector Imaging and matters thereof.
4. Defendant acknowledges the full rights of Plaintiff in regards to ownership of the mark VVI and Plaintiff's consent shall not affect rights of Plaintiff that Plaintiff has without consent.
5. Defendant shall take no action against Plaintiff whatsoever in regards to any matter of the related opposition proceedings with number 91178890; nor shall challenge the mark VVI with registration number 2524590.
6. Defendant agrees that Plaintiff shall be entitled, without waiving any additional rights or remedies otherwise available to Plaintiff at law, or in equity or by statute, to injunctive and other equitable relief in the event of a breach or intended or threatened breach by Defendant of any of the covenants pertaining to the Defendant set forth herein.
7. Defendant agrees that any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the Commonwealth of Pennsylvania without regard to the conflict of laws provisions thereof. Defendant further agrees that if one or more provisions of this Agreement are held to be illegal or unenforceable under applicable Pennsylvania law, such

illegal or unenforceable portion(s) shall be limited or excluded from this Agreement to the minimum extent required so that this Agreement shall otherwise remain in full force and effect and enforceable in accordance with its terms.

8. This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the substantive and procedural laws of the Commonwealth of Pennsylvania and shall be deemed to be executed in State College, PA. All disputes hereunder shall be heard in either the Center County Court of Common Pleas or the United States District Court for the Middle District of Pennsylvania to which Defendant irrevocably consents to personal and subject matter jurisdiction.

9. This Agreement shall be effective as of the date Defendant executes this Agreement and shall be binding upon Defendant, Defendant's heirs, executors, assigns, and administrators and shall inure to the benefit of Plaintiff, successors and assigns.

10. This Agreement can only be modified by a subsequent agreement executed by Defendant and an authorized representative of Plaintiff.

In WITNESS WHEREOF, The undersigned parties have entered in this Agreement as of the day and year first above written.

**Defendant:**

\_\_\_\_\_  
\_\_\_\_\_

AUTHORIZED SIGNATURE/DATE:

\_\_\_\_\_

PRINTED NAME AND TITLE:

\_\_\_\_\_

**Plaintiff:**

VVimaging, Inc. (dba: VVI)  
311 Adams Ave. State College, PA 16803

AUTHORIZED SIGNATURE/DATE:

\_\_\_\_\_

PRINTED NAME AND TITLE:

Edward T. VanVliet; President

From: Ed VanVliet <ed@vvi.com>  
Subject: **Re: VVI Opposition**  
Date: June 11, 2008 5:43:10 PM EDT  
To: "MASTROVITO, M." <MAMastrovito@lawabel.com>

MARIE-ANNE MASTROVITO,

On Jun 11, 2008, at 2:25 PM, MASTROVITO, M. wrote:

however, if you are not able to return the paper to us today, will you consent to put on hold our time to respond to discovery as it is not likely to be necessary in view of the withdrawal?

We look forward to hearing from you.

This is a consent for the purpose given above.

You should most likely need to file a Motion for an Extension of Time to Answer With Consent stating the reason that Plaintiff needs time to evaluate "Applicant's Request for Withdrawal of Application With Consent", which was delivered to Plaintiff on 6/11/2008.

This can easily be done electronically via ESTTA.

As I mentioned in our phone conversation, I am preparing for a seminar trip and am scheduled to be back on Monday 6/16/2008.

Best Regards,

Ed VanVliet  
VVI  
Cell: 814-441-0165  
[ed@vvi.com](mailto:ed@vvi.com)  
Video iChat: [edvv@mac.com](mailto:edvv@mac.com)

From: Ed VanVliet <ed@vvi.com>  
Subject: **Re: VVI Opposition**  
Date: June 16, 2008 9:18:08 AM EDT  
To: "MASTROVITO, M." <MAMastrovito@lawabel.com>

MARIE-ANNE MASTROVITO,

| Thank you for your e-mail. Actually, with respect to answers to discovery we do not need to file anything with the Board

The TBMP indicates that it is an optional step, subject to the process of stipulation and consent. If either party makes the filing of the motion for the stated purpose part of the stipulation and consent then the motion should (needs to) be filed.

In this case, I suggest it should be filed because the original "Interrogatory" included a Notice Of Deposition filed with the Board, so the prosecution history indicates that the Answer (to Plaintiff) is forthcoming within 30 days. Other (less formal) interrogatories that do not require a filing upon origination would not appear as such.

You can look at it this way: Next week, or thereabouts, I am scheduled to file a Motion To Compel Discovery, which I wrote a month ago. In doing so, according to the TBMP, I am required to make every attempt beforehand to make you aware that the answer should have been delivered in accordance with the section I cited in the Notice Of Discovery Deposition. That was the purpose of my phone call to you, and this email. If the "Applicant's Request for Withdrawal of Application With Consent" is unsuccessful then that is what I shall be doing. You can circumvent the Motion To Compel Discovery by filing "Motion for an Extension of Time to Answer With Consent".

In any event, the consent I give is not to affect the duration of time that the answer took to produce, the time still ticks for the answer.

Best Regards,

Ed VanVliet  
VVI  
Cell: 814-441-0165  
[ed@vvi.com](mailto:ed@vvi.com)  
Video iChat: [edvv@mac.com](mailto:edvv@mac.com)

On Jun 12, 2008, at 9:26 AM, MASTROVITO, M. wrote:

| Thank you for your e-mail. Actually, with respect to answers to discovery we do not need to file anything with the Board. We only need to file something with them if we are extending the discovery period.

Enjoy your seminar and we look forward to hearing from you next week.

Sincerely,

MARIE-ANNE MASTROVITO

ABELMAN FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017-5612

Direct Telephone: (212) 885-9248  
Facsimile: (212) 949-9190

| This is a PRIVATE and PRIVILEGED communication. If you are not the intended recipient, please do not read, copy or use it, and do not disclose it to others. Please notify the sender of the delivery error by replying to this message, and delete it from

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

### UPMC HEALTH SYSTEM

PO BOX 71120  
PITTSBURGH, PA 15213

<b>PROPOSAL REFERENCE</b>
Proposal: 1-BOSNSY Date: 4/29/2008
<b>Siemens' REPRESENTATIVE</b>
Florence Porter

### LOCAL SALES OFFICE: Mountain View - All Options

Siemens Medical Solutions USA, Inc.

1230 Shorebird Way Mail Stop 6-1

Mountain View, CA 94039

Phone: (800) 228-4128

Fax: (800) 932-5667

ALL INQUIRIES SHOULD BE DIRECTED TO THE LOCAL SALES OFFICE AND SHOULD SPECIFY THE QUOTE # AND REVISION #

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.

*See page 2*

Quote #1-BOVPRO - Rev. 1 - MLA

Contract Total \$16,570

DELIVERY SUBJECT TO AVAILABILITY

FREIGHT CHARGES AND TAXES, IF ANY, ARE PAYABLE UPON RECEIPT OF INVOICE.

WARRANTY: See specific product line attachment definitions.

THIS QUOTATION IS IN US DOLLARS AND IS VALID FOR 45 DAYS.

TERMS OF PAYMENT: Net 30 Days

Siemens Medical Solutions USA, Inc.

CUSTOMER'S ACCEPTANCE:

SUBMITTED BY: \_\_\_\_\_ (signature)

BY: \_\_\_\_\_ (signature)

NAME: Florence Porter

NAME: \_\_\_\_\_

TITLE: Siemens' REPRESENTATIVE

TITLE: \_\_\_\_\_

DATE: 4/29/2008

DATE: \_\_\_\_\_

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

### UPMC HEALTH SYSTEM

PO BOX 71120  
PITTSBURGH, PA 15213

<b>PROPOSAL REFERENCE</b>
Proposal: 1-BOSNSY Date: 4/29/2008

<u>Quote #</u>	<u>Quote Name</u>	<u>Revision</u>	<u>Terms of Payment</u>
1-BOVPRO	syngo Ultrasound Workplace software platform	1	Net 30 Days

**FOB: Shipping Point**

### RELEVANT Items for Quote #1-BOVPRO Revision 1 ( Included In Contract Total )

Qty	Part #	Description	Extended List Price
		<u>syngo Ultrasound Workplace software platform</u>	
1	10039773	<u>syngo VVI</u> syngo VVI is an advanced offline quantitative tool for the 2D assessment of myocardial motion and mechanics. Visual and quantitative data output include velocity, strain, strain rate, displacement, areas, volumes, ejection fraction, LV Mass, peak and times to peak values from global, segmental, and localized areas.	\$16,000
1	10038098	syngo Cardiac Calcs Fixed The syngo® Cardiac Calc Fixed provides a single seat, fixed license for the syngo® US Workplace software with generic and cardiac M-Mode, 2D and Doppler measurements. Easy to do, quick measurements decrease the time required to spend with an offline examination. All measurement results are saved in a database for statistical analysis and for import into the template report.	\$1,500

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

### UPMC HEALTH SYSTEM

PO BOX 71120  
PITTSBURGH, PA 15213

<b>PROPOSAL REFERENCE</b>
---------------------------

Proposal: 1-BOSNSY Date: 4/29/2008
------------------------------------

### RELEVANT Items for Quote #1-BOVPRO Revision 1 ( Included in Contract Total )

Qty	Part #	Description	Extended List Price
1	10038097	<b>syngo Stress Echo Review Fixed</b>	<b>\$3,000</b>
<p>The syngo® Stress Echo Review Fixed is dedicated to review, analyze and report exercise and pharmacological Stress Echo examinations. The Select function allows choosing the best loops from the set of acquired loops. The flexible screen layout displays simultaneous and synchronized any number of loops. A quick analysis of the stress study is guaranteed either by View by View, View by Stage or the Shuffle Mode. Wall Motion Scoring with the ASE 16 or ASE 17 segment model with customizable reporting is part of the software configuration.</p>			
1	10036635	<b>syngo US Workplace Mnl. Set-English</b>	<b>\$200</b>
<p>The operating instructions for the syngo® US Workplace includes 6 separate, bound documents: - syngo US Workplace User Manual provides the following: Hardware and software requirements Installing syngo US Workplace Configuring Sequoia to transfer data to syngo US Workplace Transferring data from Sequoia to syngo US Workplace syngo US Workplace controls Licensing a module Basic troubleshooting syngo ACQ CAP manual: Provides detailed instructions on how to use the syngo ACQ Clinical Application Package syngo QST CAP manual: Provides detailed instructions on how to use the syngo QST Clinical Application Package syngo VVI CAP manual: Provides detailed instructions on how to use the syngo VVI Clinical Application Package syngo Auto Left Heart CAP manual: Provides detailed instructions on how to use the syngo Auto Left Heart Clinical Application Package syngo fourSight™ TEE CAP manual: Provides detailed instructions on how to use the syngo fourSight™ TEE Clinical Application Package syngo fourSight™ MVA CAP manual: Provides detailed instructions on how to use the syngo fourSight™ MVA Clinical Application Package syngo AHP CAP manual: Provides detailed instructions on how to use the syngo AHP Clinical Application Package syngo fourSight ViewTool CAP manual: Provides detailed instructions on how to use the syngo fourSight ViewTool Clinical Application Package syngo Image Review manual: Provides detailed instructions on how to use the syngo Image Review capabilities syngo US Workplace Server manual: Provides detailed instructions on how to use the syngo US Workplace Server capabilities</p>			

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

### UPMC HEALTH SYSTEM

PO BOX 71120  
PITTSBURGH, PA 15213

<b>PROPOSAL REFERENCE</b>
---------------------------

Proposal: 1-BOSNSY Date: 4/29/2008
------------------------------------

### RELEVANT Items for Quote #1-BOVPRO Revision 1 ( Included in Contract Total )

Qty	Part #	Description	Extended List Price
1	10039906	<b>syngo US Workplace</b>	<b>\$9,500</b>
<p>Single seat installation includes a server licence which supports the following: DICOM Query/Retrieve license as an SCU (service class user) Up to 10 DICOM SCU Nodes syngo US Workplace streamlines your clinical workflow, improving productivity with the right information at the right time and place, both online and offline. It allows viewing of images from ultrasound platforms with the same consistent application, maximizing efficiency and minimizing cost. syngo US Workplace scales seamlessly to analyze images from small practices to large hospital departments, maximizing your investment. syngo US Workplace 3.0 introduces enhanced versions of certain clinical application packages (CAPs) featuring advanced diagnostic capabilities for ultrasound. Additionally, the base software supports image review of a complete ultrasound study. syngo® Vector Velocity Imaging™ (VVI) is an advanced offline quantitative tool for 2D assessment of myocardial mechanics and motion. The enhanced version in syngo US Workplace 3.0 provides a dual trace for simultaneous endocardial and epicardial analysis. syngo VVI allows for parametrical, graphical and quantitative display of peak and time-to-peak values for velocity, strain, strain rate, displacement, rotation and rotation rate in two dimensions. You can also manually select R-waves with images from systems that do not provide this data. syngo Auto Left Heart (ALH) extends the automatic detection and display of left ventricular volumes to the left atrium. Additionally, syngo ALH supports all ultrasound B-mode images. syngo US Workplace can be installed onto a customer's supplied hardware (minimum specifications required).</p>			
1	ACU_FREIGHT_COST	<b>Ultrasound Freight Costs - \$70</b>	<b>\$70</b>

Quote #1-BOVPRO Extended Total: **\$30,270**

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

### UPMC HEALTH SYSTEM

PO BOX 71120  
PITTSBURGH, PA 15213

<b>PROPOSAL REFERENCE</b>
---------------------------

Proposal: 1-BOSNSY Date: 4/29/2008
------------------------------------

Extended List Price Total:	\$30,270
Less Discount:	\$13,700
<b>Extended Contract Total:</b>	<b>\$16,570</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 modality purchase. All accessories can be purchased or financed as part of this order. To purchase accessories directly or to receive our accessory catalogs, please call us directly at 1-888-222-9944 ext. 7 or contact your local sales representative.*

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

### Terms and Conditions of Sale

#### 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. Products may contain used, reworked or refurbished parts and components that comply with performance and reliability specifications and controls. Purchaser acknowledges that this is a commercial and not a consumer transaction.

**1.2 Acceptance.** An order shall be binding on Seller only after a credit approval and an order confirmation have been issued by Seller, and shall be subject to Seller's on-going credit review and approval. Acceptance is expressly made conditional on Purchaser's acceptance of these terms and conditions. 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 and not required for the operation and use of the Products, 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, (f) 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, and (g) 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.

#### 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; DEFAULT

**4.1 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.

**4.2 Late Payment.** A service charge of 1½% 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 Where Payment Due Upon Installation or Completion.** Should any terms of payment provided 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.** 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

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possession of the Products without notice or demand and without legal proceedings; (e) at the request of Seller, Purchaser shall 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

**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/FILING

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. 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 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 line 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 without Seller's prior written approval; which failed due to causes from within non-Seller supplied equipment; which have been damaged from the use of operating supplies or consumable parts not approved by Seller.

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In addition, no warranty extended by Seller shall apply to any transducer failure due to events such as cracking from high impact drops, cable rupture from rolling equipment over the cable, or delamination from cleaning 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.

**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 INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SALE OR USE OF THE PRODUCTS.** This provision does not affect third party claims for personal injury arising as a result of Seller's negligence or product defect. **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 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 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 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

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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 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 Customer 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. Terms and Conditions of Sale

**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 or 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.

**2. SCOPE:** The following terms and conditions shall apply to all Software and Documentation provided by Licensor to Licensee under the Agreement (whether included with other products listed in the Agreement or listed separately in the Agreement), together with any updates or revisions thereto which Licensor may provide to Licensee, and all copies thereof, except any Software and/or Documentation licensed directly by Licensor's supplier under a separate end-user license agreement accompanying the Software or the Documentation, in which case Licensee agrees to be bound by that license agreement as a condition to using the Software and/or Documentation. Except as expressly provided herein, and provided that in no event shall the warranties or other obligations of Licensor with respect to such Software or Documentation exceed those set forth in this Schedule, this Schedule shall be subject to the liability limitations and exclusions and other terms and conditions set forth in the Agreement. **ANY USE OF THE SOFTWARE, INCLUDING BUT NOT LIMITED TO USE ON THE DESIGNATED UNIT, WILL CONSTITUTE LICENSEE'S AGREEMENT TO THIS SOFTWARE LICENSE SCHEDULE (OR RATIFICATION OF ANY PREVIOUS CONSENT).**

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## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

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Revised 03-15-05

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

### US Warranty Information

<u>Product</u>	<u>Period of Warranty 1 2</u>	<u>Coverage</u>
New US Systems <sup>3</sup>	12 month	Full Warranty (parts & labor, excluding consumables)
Refurbished US Systems <sup>3</sup>	12 month	Full Warranty (parts & labor, excluding consumables)
Transducers sold with New US Systems	12 month	Wear and Failure only (damage not included)
TEE probes sold with New US Systems	12 month	Wear and Failure only (damage not included)
Specialty probes sold with New US Systems	12 month	Wear and Failure only (damage not included)
Ultrasound Upgrades (includes transducers, TEE's, Specialty probes, OEMs and Upgrade)	3 month	Full Warranty (parts & labor: wear and failure only on transducers and probes)

**Post-Warranty (after expiration of system warranty) – Replacement parts only!**

Spare Parts	6 month	Parts only
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ACCEPTANCE ON FIRST PAGE INCLUDES ALL FOLLOWING PAGES AS SPECIFIED ABOVE

## Siemens Medical Solutions USA, Inc.

51 Valley Stream Parkway, Malvern PA 19355

Transducers	6 month	Parts only
TEE Probes	6 month	Parts only
Specialty Probes	6 month	Parts only
Consumables	Not covered	

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

1 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.

2 While product shall be delivered FOB shipping point, seller will maintain risk of loss of purchaser's equipment during travel from the factory to the purchaser's destination, and shall be responsible for insuring the equipment during such transit.

3 Trade-in Warranty policy: **New and refurbished systems sold with trade-ins come with a 12 month warranty** . The warranty is reduced to 90 days if the same system is traded in (e.g. Sequoia to Sequoia trade-in for e.g) . System warranty applies to all transducers, probes and OEM's sold with the system