



Standard Terms and Conditions

The Equipment and Disposable Products listed in this Agreement is offered by Philips ("Philips") only under the terms and conditions described below (the "Standard Terms and Conditions").

1. **Prices; Taxes**

The purchase price stated in this Agreement does not include applicable sales, excise, use, other taxes, or government surcharges in effect or later levied. Customer shall provide Philips with appropriate exemption certificate reasonably in advance of the date the Equipment and/or Disposable Product is available for delivery, otherwise, Philips shall invoice Customer for those taxes, as well as any government surcharges, and Customer shall pay those taxes in accordance with the terms of the invoice. Government surcharges are non-exempt under law. Customer is defined as a legal entity its affiliates and or subsidiaries who purchase Equipment and/or Disposable Products and take title of the purchased Equipment and/or Disposable Products from Philips.

2. **Payment Terms**

2.1. **Equipment.** Unless otherwise specified in the Agreement, Philips will invoice Customer, and Customer will pay such invoice for Equipment net thirty (30) days from Philips' invoice date.

2.1.1. Philips may make partial or early shipments and Customer shall pay such invoice based on the date of invoice for Equipment in accordance with the payment terms set forth in this Agreement.

2.1.2. Orders are subject to Philips' on-going credit review and approval.

2.1.3. If Customer fails to pay any amount when due, in addition to any other rights or remedies available to Philips at law or in equity, Philips may discontinue the performance of services, discontinue the delivery of the Equipment, or deduct the unpaid amount from any amounts otherwise owed to Customer by Philips under any agreement with Customer. In any action initiated to enforce the terms of the Agreement following a Customer default or Equipment cancellation under an order arising from the Agreement, Philips shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' fees, in connection with such action.

2.1.4. Payments may be made by check, ACH or wire. Philips does not accept transaction fees for wire transfers.

2.1.5. If the Agreement indicates net prices that are each associated with a payment method, then Philips will invoice Customer, and Customer will pay, the net price that corresponds to Customer's elected payment method.

2.2. **Disposable Products.**

2.2.1. Customer must issue a purchase order for the purchase of Disposable Products. Unless otherwise specified under consignment, Philips will issue an invoice upon shipment of Disposable Products to Customer. Customer will pay such invoice in U.S. dollars in full for each product net thirty (30) days from Philips' invoice date.

2.2.2. Philips may make partial or early shipments and Customer shall pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in this Agreement.

2.2.3. Orders are subject to Philips' on-going credit review and approval.

2.2.4. If Customer fails to pay any amount when due, in addition to any other rights or remedies available to Philips at law or in equity, Philips may discontinue the performance of services, discontinue the delivery of the product, upon five (5) business days' notice, or deduct the unpaid amount from any amounts otherwise owed to Customer by Philips under any agreement with Customer. In any action initiated to enforce the terms of the Agreement following a Customer default or product cancellation under an order arising from the Agreement, Philips shall be

entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' fees, in connection with such action.

2.2.5. Payments may be made by check, ACH or wire. Philips does not accept transaction fees for wire transfers.

2.2.6. If the Agreement indicates net prices that are each associated with a payment method, then Philips will invoice Customer, and Customer will pay, the net price that corresponds to Customer's elected payment method.

3. **Trade - In**

3.1. If Customer will be trading-in any equipment ("Trade-In"), then:

3.1.1. Customer represents and warrants that Customer has good and marketable title to the Trade-In as of the date of the Agreement and will have good and marketable title when Philips removes the Trade-in from Customer's site (the "Removal Date").

3.1.2. Removal of the Trade-In from Customer's site shall occur no later than the installation of Customer's new system, unless otherwise agreed in writing between Philips and the Customer. Title to the Trade-in shall pass from Customer to Philips on the Removal Date or at installation of the purchased system, whichever occurs first. After title to the Trade-In passes to Philips, Customer shall not use the Trade-In.

3.1.3. Notwithstanding anything to the contrary in a current applicable Business Associate Addendum ("BAA") between the parties, Customer represents and warrants that Customer has removed or de-identified all Protected Health Information ("PHI") from the Trade-In equipment as of the date the equipment is removed and will otherwise comply with all applicable privacy laws. To the extent Customer has not done so, Customer agrees to reimburse Philips for any out-of-pocket costs Philips incurs to remove or de-identify PHI from the Trade-In.

3.1.4. Customer will ensure that the Trade-In is clean and sanitized, and that all potentially infected materials and biological fluids are removed prior to its de-installation and removal.

3.1.5. If (a) the condition of the Trade-In is not substantially the same when Philips removes the Trade-In (ordinary wear and tear excepted) as it was when Philips quoted the Trade-In value; or, (b) Customer delays the removal of the Trade-In, then Philips may reduce the price quoted for such Trade-In or cancel the Trade-In, and Customer will pay the adjustment amount within thirty (30) days from the date of invoice.

3.1.6. If Philips does not receive timely possession of the Trade-In, Philips will, at its option, either charge Customer the amount of the Trade-in allowance and cancel the trade-in, or re-value the trade-in allowance accordingly.

3.1.7. If Customer is unable to provide Philips with the Trade-In, after execution of the Agreement, then Philips may invoice Customer for the Trade-In value. Customer will pay invoice within thirty (30) days from the invoice date.

3.1.8. Evidence that Customer intends to trade in an asset as part of the purchase or lease of any Equipment shall be in the form of, but not limited to: (a) receiving a trade in quote and/or authorization from Philips on the value of the asset to be traded in; (b) providing Philips with serial numbers of assets to be traded in; and/or, (c) providing Philips with a de-installation date to remove an existing asset in order to install Philips quoted equipment.

4. **Security Interest**

Philips may file a financing statement for such security interest and Customer shall sign any financing statements or other documents necessary to perfect Philips' security interests in the Equipment and/or Disposable Products.

5. **Shipment and Risk of Loss**

- 5.1. **Equipment.** Except as otherwise stated in the applicable Equipment specific schedule, title to any Equipment (excluding software), and risk of loss or damage shall pass to the Customer F.O.B. destination, freight prepaid and absorbed. Customer shall obtain and pay for insurance covering such risks at destination.
- 5.1.1. Customer has no right to cancel an order for purchased Equipment after such order has been shipped, unless such cancellation right is granted to the Customer by mandatory law in which case the Customer shall pay the costs incurred by Philips up to the date of cancellation. In other cases of cancellation, Customer shall pay 15% of the purchase price of the Equipment as a cancellation fee.
- 5.1.2. In the instance of rented Equipment, Philips will retain legal title to the Equipment at all times. Notwithstanding Philips' holding legal title, Customer will list Philips as the loss payee in Customer's insurance that insures the Equipment against damage, vandalism and theft and will provide evidence of this insurance to Philips. Philips may, at its discretion, file a UCC financing statement, for informational purposes, in connections with rented Equipment placed with Customer under this Agreement.
- 5.2. **Disposable Products.** Shipping charges will be prepaid by Philips and invoiced. Disposable Product sales are made F.O.B. Philips' manufacturing facility, and title and risk of loss passes to Customer at the time of Philips' delivery to the carrier. Disposable Products provided on a consignment basis in accordance with the Consignment Exhibit are shipped F.O.B. destination and risk of loss, but not title, passes to Customer at the time of delivery to Customer.

6. **Disposable Products Returns**

Prior approval by Philips is required to return Disposable Products for credit or exchange. Such approval may be requested by contacting Philips Customer Service as specified on the attached Contact Information sheet. Disposable Products may be returned due to: (i) damage prior to receipt by Customer or failure to conform to the specifications, in which case, Philips shall credit Customer for the amount of the return shipping fees; (ii) incorrect Disposable Product(s) received, in which case Philips will issue a call tag and provide a return shipping label for Disposable Product; or (iii) incorrect Disposable Product(s) ordered, in which case Customer must report such incorrect order to Philips within fifteen (15) days of Customer's receipt of Disposable Product(s). In the instance of any return, Philips may require a new or revised purchase order for the replacement order. Except in the instance of (i) above, Disposable Products will only be considered for exchange or credit if the item is in its original packaging, with no visible marks or damage, and the sterile packaging remains uncompromised. No credit or exchange will be issued for items returned in unsaleable condition. Unless otherwise explicitly agreed to in this Agreement or an Exhibit, Philips does not accept returns of excess inventory, for stock rotation, or other exchange programs. Upon approval of the request to return, which approval will not be unreasonably withheld, Philips will issue a Return Material Authorization (RMA) number. The RMA number must be included on all returned Disposable Product shipping cartons (do not write this number directly on the product package).

7. **Site Preparation and Installation**

- 7.1. **Site Access.** Customer shall provide Philips full and free access to the installation site and a suitable safe space for the storage of the Equipment before installation. Customer shall ensure, at no charge to Philips, that there are no obstacles preventing Philips from moving the Equipment from the entrance of the Customer's premises to the installation site.
- 7.2. **Site Preparation and Installation.**
- 7.2.1. **Customer Responsibility.** Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, installation of safety switch or breaker, and restoration work. The Equipment will be installed during normal working hours. Except where Philips has agreed in writing to provide construction services for a fee pursuant to a construction agreement and scope

of work signed by Customer, Customer shall be responsible, at its expense, for the preparation of the installation site where the Equipment will be installed including any required structural alterations. Customer shall provide any and all plumbing, carpentry work, conduit, wiring including communications and/or computer wiring, network equipment, power supply, surge suppression and power conditioning (except to the extent they are expressly included in the Agreement), fire protection and environmental controls, ground fault and isolation system, and other fixtures and utilities required to properly attach, install, and use the Equipment. Site preparation shall be in compliance with all applicable laws, including all safety, electrical, and building codes relevant to the Equipment and its installation and use. The sufficiency of any installation site plans shall be the responsibility of Customer. Customer, at its expense, shall obtain all permits and licenses required by federal, state, or local authorities in connection with the installation and operation of the Equipment, including any certificate of need and zoning variances.

7.2.2. Unless otherwise specified by Philips, Customer shall advise Philips of site conditions at or near the location where equipment is installed five (5) days prior to the mutually agreed upon delivery date. The update shall include but not limited to the following:

7.2.2.1. (i) Hazardous Materials. Asbestos and other hazardous materials that could adversely affect the installation or pose a health or safety risk to Philips' personnel, and Customer shall ensure that those conditions are corrected and hazardous materials removed, and that the site is fully prepared and available to Philips before installation work begins. Customer represents and warrants that an asbestos survey of the facility has been performed to determine the presence, location, quantity and condition of asbestos containing materials (ACM) or presumed asbestos containing materials (PACM) at the facility; and the facility and/or work area does not contain any ACM or PACM or the facility and/or work area contains ACM or PACM, such material has been encapsulated or enclosed in accordance with applicable laws and the work will not disturb any such materials. (ii) Construction. All construction work in technical and operator room(s) is finished including but not limited to the responsibilities identified in 7.2.1.

7.2.3. Delays. If site preparation is not on schedule five (5) days prior to the mutually agreed upon delivery date or as otherwise specified by Philips, Philips and Customer will conduct an evaluation of the site and establish a revised installation schedule. In the event that installation is delayed by Customer within five (5) days prior to the mutually agreed upon delivery date or after the start of installation, Customer will be responsible for: (i) storage and fees for the preservation and life support of the equipment to ensure high quality and long life of system(s); and, (ii) Costs associated with rescheduling and coordination for all resources and third party providers, including travel costs for split delivery and installation directly related to the delay in installation. If during installation Philips discovers hazardous materials (i.e. asbestos, etc.) all installation activities will stop, and Customer will remove and dispose of the hazardous materials. Once the issue giving rise to the delay has been rectified and the site meets the criteria set forth in this Section 7, Philips and Customer will conduct an evaluation of the site and establish a new installation schedule.

7.2.4. Philips Responsibility. Unless additional professional services are purchased separately (including turnkey) and/or professional services are set forth in a statement of work or project implementation plan under the agreement for the Equipment purchased hereunder upon delivery, Philips will unpack the Equipment (if unpacking is required) and connect the Equipment to a safety switch or breaker that has been installed by the Customer, and calibrate and test the Equipment.

7.3. PHILIPS MAKES NO WARRANTY AND ASSUMES NO LIABILITY FOR THE FITNESS OR ADEQUACY OF THE SITE IN WHICH THE EQUIPMENT IS TO BE INSTALLED OR USED. EXCEPT OTHERWISE PROHIBITED BY STATE LAW OR STATE CONSTITUTION, CUSTOMER SHALL INDEMNIFY DEFEND, AND HOLD HARMLESS PHILIPS AND ITS AFFILIATES AGAINST ANY COSTS, LOSSES, EXPENSES, PHYSICAL PROPERTY DAMAGE, AND/OR THIRD PARTY CLAIMS, INCLUDING SUBROGATION CLAIMS, COLLECTIVELY ALL THE FOREGOING ARISING FROM OR RELATING TO CUSTOMER'S SITE PREPARATION RESPONSIBILITIES.

- 7.4. Local Labor. If local labor conditions, including but not limited to a requirement to utilize union labor, require the use of non-Philips employees to participate in the installation of the Equipment, then such participation of non-Philips employees shall be at Customer's expense. In such case, Philips will provide engineering supervision during the installation.
- 7.5. Remote Services Network ("RSN"). Customer will (a) provide Philips with a secure location at Customer's premises to store one Philips remote services network router and provide full and free access to this router, (or a Customer-owned router acceptable to Philips) for connection to the equipment and to Customer's network; or (b) provide Philips with outbound internet access over SSL; at all times during the warranty period provide full and free access to the Equipment and the Customer network for Philips' use in remote servicing of the Equipment, remote assistance to personnel that operate the Equipment, updating the Equipment software, transmitting automated status notifications from the Equipment and regular uploading of Equipment data files (such as but not limited to error logs and utilization data for improvement of Philips Equipment and services and aggregation into services). Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the Equipment.

8. **Warranty**

- 8.1. **Equipment/Hardware/Systems.** Philips warrants to Customer that Equipment (including its operating software) will perform in substantial compliance with its performance specifications, in the documentation accompanying the Equipment, for a period of twelve (12) months, commencing on the date on which the Equipment is installed.

Philips' sole obligation under this Limited Warranty shall be to provide parts and labor required to cause the System(s) to operate in accordance with the specifications during the Warranty Period. Philips, in its sole discretion, reserves the right to use new or like new parts in servicing or repair of the System(s).

- 8.1.1. If the start of the installation is delayed for any reason beyond the control of Philips for more than thirty (30) days following the date that Philips notifies Customer that the major components of the Equipment are available for delivery, the warranty period begins on the thirty-first (31st) day following that date.
- 8.1.2. Philips' sole obligations and Customer's exclusive remedy under any Equipment warranty is limited to Philips providing parts and labor required to cause the Equipment to operate in accordance with the specifications during the Warranty Period. Philips, in its sole discretion, reserves the right to use new or like new parts in servicing or repair of the System(s). Warranty service outside of normal working hours (i.e. 8:00 AM - 5:00 PM, Monday through Friday, excluding Philips' observed holidays), will be subject to payment by Customer at Philips' standard service rates.
- 8.1.3. This warranty is subject to the following conditions: the Equipment: (a) is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips); (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips' written instructions and for the purpose for which the Equipment was intended; and, (c) is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the Equipment and Customer is to notify Philips immediately if the Equipment at any time fails to meet its performance specifications. Philips' obligations under any Equipment warranty do not apply to any Equipment defects resulting from improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software running in connection with the Licensed Software without prior approval by Philips; use or operation of the Equipment other than in accordance with Philips' applicable Equipment specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the Equipment; or viruses or similar software interference resulting from connection of the Equipment to a network. The obligations of Philips described

herein and in the applicable Equipment-specific warranty document are Philips' only obligations and Customer's sole and exclusive remedy for a breach of an Equipment warranty.

8.1.4. Upon expiration of Limited Warranty, Customer shall have the option to purchase maintenance and service coverage for each placed System at any time during the Term of this Agreement by contacting igtdservicecontracts@philips.com. In the absence of an extended service contract between the parties, all hardware maintenance and repairs necessary outside of the Limited Warranty Period is the responsibility of the Customer.

8.1.5. THE WARRANTIES SET FORTH HEREIN AND IN PHILIPS' WARRANTY DOCUMENT WITH RESPECT TO EQUIPMENT (INCLUDING THE SOFTWARE PROVIDED WITH THE EQUIPMENT) ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE EQUIPMENT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8.2. **Disposable Products.** Philips warrants that at the time of shipment, Disposable Products will: (i) comply with the U.S. Federal Food, Drug and Cosmetic Act, if applicable; (ii) have been manufactured, packaged, and stored in compliance with applicable laws, governmental regulations and good manufacturing practices ("GMP"); (iii) be free from defects in material and workmanship when used by the stated "Use By" or "Expiration" date and when package is unopened and undamaged immediately before use. Customer's sole remedy under this warranty is, at Philips' option and expense, the replacement of the Disposable Product or credit of the purchase price. Philips' obligation under this limited warranty is subject to Customer's compliance with Philips' then-current Return Material Authorization procedures. The foregoing warranty does not apply to Disposable Products that are or have been: (i) expired; (ii) repaired, altered, modified or reprocessed except by or under the authorization of Philips; (iii) not used or stored in accordance with the instructions for use supplied by Philips; or (iv) subjected to misuse, negligence or to an accident. EXCEPT FOR THE ABOVE LIMITED WARRANTY, PHILIPS MAKES NO, AND EXPRESSLY DISCLAIMS, ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ITS DISPOSABLE PRODUCTS, INCLUDING WITHOUT LIMITATION NON-INFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. EXCEPT FOR THE ABOVE LIMITED WARRANTY, PHILIPS DOES NOT WARRANT THAT PHILIPS' DISPOSABLE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS. THIS LIMITED WARRANTY EXTENDS ONLY TO CUSTOMER.

9. **Indemnification**

9.1. Philips will indemnify and defend Customer against any third party claim, action, or suit against Customer ("Claim"), including judgments, settlements and reasonable attorney's fees resulting from such Claim, to the extent such Claim directly arises from: (i) bodily injury (including death) and (ii) tangible property damage (representing the actual cost to repair or replace physical property damage) and to the extent such injuries or damages under clauses (i) and (ii) are caused by Philips' negligent acts or omissions or by a proven Product defect in Equipment and/or Disposable Product covered in this Agreement.

9.2. Philips will have no indemnity or defense obligation for any Claim that arises from: (i) the negligent act or omission, or willful misconduct of Customer; (ii) Disposable Products that are or have been expired, repaired, altered, modified or reprocessed except by or under authorization from Philips; (iii) Disposable Products not used or stored in accordance with the instructions for use; (iv) Disposable Products that have been modified by Philips in accordance with Customer-provided specifications or instructions; or (v) third party products.

9.3. Customer will indemnify and defend Philips against any third party Claim to the extent the Claim directly arises from Section 9.2 (i), (ii), (iii), (iv), or (v) above.

9.4. Philips shall indemnify and defend Customer against any claim that Philips Equipment and/or Disposable Product provided in the Agreement infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, subject to the

indemnification conditions in Section 9.5 below. The provisions of this section shall not apply if the product is sold or transferred.

If (a) Philips Equipment and/or Disposable Product is found or believed by Philips to infringe a valid patent or copyright; or, (b) Customer has been enjoined from using the Philips Equipment and/or Disposable Product pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option: (i) procure the right for Customer to use the Equipment and/or Disposable Product; (ii) replace or modify the Equipment and/or Disposable Product to avoid infringement; or (iii) refund to Customer a portion of the Equipment and/or Disposable Product purchase price upon the return of the original Equipment and/or Disposable Product. Philips shall have no obligation for any claim of infringement arising from: Philips' compliance with Customer's designs, specifications, or instructions; Philips' use of technical information or technology supplied by Customer; modifications to the Equipment and/or Disposable Product by Customer or its agents; use of the Equipment and/or Disposable Product other than in accordance with the Equipment and/or Disposable Product specifications or applicable written Equipment and/or Disposable Product instructions; use of the Equipment and/or Disposable Products with any other product not sold by Philips to customer and the Philips Equipment and/or Disposable Product in and of itself is not infringing; if infringement would have been avoided by the use of a current unaltered release of the Equipment and/or Disposable Product, provided that, Philips makes such current unaltered release available to customer at no additional charge; or use of the Philips Equipment and/or Disposable Product after Philips has advised Customer, in writing, to stop use of the Philips Equipment and/or Disposable Product in view of the claimed infringement, provided that, this shall not be a replacement for the remedies set forth in this Section 9.4 (i)-(iii). The terms in this section state Philips' entire obligation and liability for claims of infringement, and Customer's sole remedy in the event of a claim of infringement.

- 9.5. The obligations of the indemnifying party are conditioned on the following: (a) indemnified party notifies indemnifying party of Claim in writing within thirty (30) days of the indemnified party being made aware of the Claim; (b) the indemnified party gives indemnifying party sole authority and control of the defense or settlement of the Claim with counsel of the indemnifying party's choice; and (c) indemnified party provides all information and assistance requested by the indemnifying party to handle the defense or settlement of the Claim.

10. Limitation of Liability

10.1. THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM EQUIPMENT AND/OR DISPOSABLE PRODUCT, LICENSED SOFTWARE, AND/OR SERVICE IS LIMITED TO THE PRICE PAID HEREUNDER FOR THE EQUIPMENT AND/OR DISPOSABLE PRODUCTS, LICENSED SOFTWARE, OR SERVICE GIVING RISE TO THE LIABILITY.

10.2. THIS LIMITATION SHALL NOT APPLY TO:

- 10.2.1. THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN EQUIPMENT AND/OR DISPOSABLE PRODUCT DEFECT;
- 10.2.2. CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN EQUIPMENT AND/OR DISPOSABLE PRODUCT DEFECT;
- 10.2.3. OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PHI;
- 10.2.4. FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES; and,

10.2.5. PHILIPS INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATION UNDER SECTION 9 OF THIS AGREEMENT.

11. Disclaimer

IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE EQUIPMENT AND/OR DISPOSABLE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

12. Confidentiality

Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, employees, and/or its patients, and the Agreement and its terms, including the pricing terms under which Customer has agreed to purchase the Equipment and/or Disposable Products. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by the Agreement. The disclosing party maintains exclusive ownership of the confidential information which it discloses to the receiving party, and a receiving party shall be responsible for the breach of these confidentiality terms by any of its representatives or other person to whom it may disclose the confidential information. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of these Standard Terms and Conditions or any other obligation of confidentiality or (b) is lawfully obtained by the receiving Party from a third party without any breach of confidentiality or violation of law. Notwithstanding the foregoing, in the event that the receiving party is required by law to disclose any confidential information to a court, government department/ agency or regulatory body, the receiving party may so disclose, provided that it shall, to the extent permitted by applicable law, first inform the disclosing party of the request or requirement for disclosure to allow an opportunity for the disclosing party to apply for an order to prohibit or restrict such disclosure. Moreover, nothing set forth herein shall prohibit Customer from disclosing confidential information required by state or federal open records laws, to the extent disclosed in compliance with the rules and procedures applicable thereto, including notifying Philips and providing Philips an opportunity to argue certain information may be exempt as a trade secret, if applicable thereunder.

13. Compliance with Laws & Privacy

- 13.1. Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the Agreement, including, but not limited to, those relating to employment practices federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended and the Veterans Readjustment ACT of 1972 as amended), E-Verify, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).
- 13.2. It is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act (ARRA). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.
- 13.3. Equipment and/or Disposable Products Safety and Other Complaints. Customer will report immediately to Philips any event of which Customer becomes aware that suggests that any services or Equipment and/or Disposable Products provided by Philips, for any reason: (a) may have caused or

contributed to a death or serious injury, or (b) have malfunctioned where and such malfunctions would be likely to cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Philips complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels or instructions for use of the Equipment and/or Disposable Products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Philips Equipment and/or Disposable Products provided by Philips hereunder, unless otherwise required by law.

14. Excluded Provider

As of the date of the sale of this Equipment and/or Disposable Products, Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for the Equipment and/or Disposable Products and services provided under these Standard Terms and Conditions (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing services hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the Parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for Equipment and/or Disposable Products and services not yet shipped or rendered prior to a date of exclusion.

15. Omnibus Reconciliation Act (OMNI) Social Security (PL96-499, Public Law)

Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing services or Equipment and/or Disposable Products pursuant to these Standard Terms and Conditions, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Standard Terms and Conditions and the books, documents and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Standard Terms and Conditions through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Standard Terms and Conditions. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.

16. General Terms

The following additional terms shall be applicable to the purchase or placement of Equipment and/or the purchase of the Disposable Products:

16.1. Force Majeure. Each party shall be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, health pandemics, epidemics, viral outbreaks, acts of any civil, military or government authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any government act, regulation or

mandatory direction, request. For the sake of clarity, any supply chain disruption due to COVID-19 shall be considered a force majeure event.

- 16.2. **Bankruptcy.** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Philips may cancel any unfulfilled obligations, or suspend performance; however, Customer's financial obligations to Philips shall remain in effect.
- 16.3. **Assignment.** Customer may not assign any rights or obligations in connection with the transactions contemplated by the Agreement without the prior written consent of Philips, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect. Notwithstanding the foregoing, either party shall be entitled to assign this Agreement, without the prior consent of the other party, to a (i) purchaser of a sale of a substantial amount of their assets to which this Agreement relates or to a (ii) different affiliated legal entity of a party to this Agreement or their parent company to support an internal reorganization of the assets of such party or such party's parent corporate legal entity; provided that, the assignee assumes all liabilities and obligations of the assignor and the assignor is not in breach of its payment obligations under this Agreement prior to such assignment.
- 16.4. **Governing Law.** All transactions contemplated by the Agreement shall be governed by the laws of the state where the equipment will be installed, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act (UCITA), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.
- 16.5. **Entire Agreement.** These Standard Terms and Conditions, constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the Agreement, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the Agreement. The pricing in the Agreement is based upon the Standard Terms and Conditions in the Agreement. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the Agreement.
- 16.6. **Headings.** The headings in the Agreement are intended for convenience only and shall not be used to interpret the Agreement. The validity and enforceability of the remaining provisions shall not be affected or impaired and shall continue in full force and effect.
- 16.7. **Notices.** Notices or other communications shall be in writing, and shall be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth herein: 9965 Federal Drive Colorado Springs, CO 80921, or via email to igtd.salescontracts@philips.com.
- 16.8. **Performance.** The failure of Customer or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar Equipment and/or Disposable Products or services shall not serve as references in interpreting the Standard Terms and Conditions of the Agreement.
- 16.9. **Obligations.** Customer's obligations are independent of any other obligations the Customer may have under any other agreement, contract, or account with Philips. Customer will not exercise any right of offset in connection with the Standard Terms and Conditions in the Agreement or in connection with any other agreement, contract, or account with Philips.
- 16.10. **Additional Terms.** Equipment and Disposable Products specific exhibit(s) are incorporated herein as

they apply to the Equipment and Disposable Products listed in the Agreement and their additional terms shall apply solely to Customer's purchase or placement of the Equipment and/or purchase of the Disposable Products specified therein. If any terms set forth in an Equipment and/or Disposable Products specific exhibit(s) conflict with terms set forth in these Standard Terms and Conditions, the terms set forth in the Equipment and Disposable Products specific exhibit(s) shall govern.

16.11. **Discounts.** The parties acknowledge that the prices under this Agreement may reflect discounts, rebates, or other reductions in price (collectively, "discounts"), and it is their intention that such discounts shall be administered consistent with the discount exception to the federal anti-kickback statute (42 USC 1320a-7b(B)(3)(A)) and the related regulatory discount safe harbor (42 CFR 1001.952(h)). Philips will reflect when a discount applies on invoices or alternative documents, and Customer may request additional documentation of purchases and discounts hereunder as necessary to facilitate appropriate reporting. To the extent and as required by applicable law, regulations, or other contractual obligations, it is Customer's responsibility to appropriately report or reflect such discounts, including any bundled discounts, on cost reports or claims submitted to third party payors, including but not limited to federal or state health care programs. Further, Customer will retain documentation provided by Philips relating to purchases and discounts hereunder and make it available to federal or state health care program representatives upon request.

17. **Delivery**

17.1. Philips will use commercially reasonable efforts to ship the Equipment and Disposable Products to the Customer (a) by the mutually agreed upon shipment date; or (b) as otherwise agreed in writing. Philips will ship the Equipment and/or Disposable Product according to Philips' standard commercial practices. Philips may make partial shipments.

17.2. If Customer requests a delay in the date major components of the Equipment are available for delivery, then Philips will place the Equipment in storage and the unpaid portion of the purchase price shall be due. Customer will reimburse Philips for all storage fees, transportation expenses, and related costs incurred by Philips.

18. **Resale**

Customer represents and warrants that the Equipment and Disposable Products are being acquired solely for the Customer's own use at the Customer facility(ies) listed herein. Customer shall not resell the Equipment and/or Disposable Products.

19. **Analysis and Reverse Engineering Prohibited**

Company agrees not to analyze for composition, software, internal elements, structure or reverse engineer or transfer to any third party for analysis, reverse engineering, or any other purpose, any Disposable Products and or Equipment without the express prior written consent of Philips.

20. **PHI Deletion**

If equipment is rented under this Agreement, Customer agrees to delete all data collected on the equipment (with Philips' reasonable instructions) including specifically any and all data constituting Protected Health Information as that term is defined in 45 CFR 164.502(d) prior to returning the Equipment to Philips at the expiration of any rental term under this Agreement.

21. **Equipment Log File Access.**

Customer agrees that Philips may periodically remotely connect to Philips equipment and collect and use information from the system log file for Philips' own business purposes (including, but not limited to, for data analytics activities, to facilitate and advise on continued and sustained use of Philips' or its affiliates' products and services, for research, product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes). The system log file does not contain any protected health information (within the meaning of the HIPAA Privacy Rule) or any information that is capable of identifying an individual.