PHILIPS

Schedule 9
Non Diagnostic Enterprise Operational Informatics (EOI) Software Solutions Schedule (Rev 27)

Product Category	Products
Non Diagnostic Enterprise Operational Informatics (EOI) Software Solutions	PerformanceBridge Software Solutions

This Product-specific Schedule is subject to and incorporated into the Conditions of Sale. Without limiting the applicability of Section 14.15 (Product-Specific Terms) therein, the following sections of the Conditions of Sale do not apply to this Schedule 9: 1.4 and 1.6 (Quotation, Order, and Payment), 2 (Lease and Trade-In), and 3.2 and 3.3 (Shipment and Installation).

1. Definitions

1.1 "Acceptance" of all EOI Software Solutions shall occur upon Go-Live. Customer shall promptly sign the Philips' Customer Acceptance Form, at such time. All fees for licenses commence at the same time and, in the event of multiple sites, all licenses and fees start upon Go-Live for the first site, unless otherwise provided on a Quotation. If Customer does not sign the Philips' Customer Acceptance Form within five days of the completion of testing and implementation, Customer shall then be deemed to have accepted the EOI Software Solutions as of the end of the acceptance testing period. In any event, Customer shall be deemed to have accepted the EOI Software Solutions upon use thereof.

1.2 "Client Device" shall mean a computer, workstation, terminal, or other electronic device used to access the Product.

1.3 "Go-Live" shall mean the date that Philips makes the EOI Software Solutions available to Customer for first use consistent with the usage rights and restrictions under the terms of this Agreement and upon completion of the installation of any server(s) provided by Customer as part of Customer Provided Hardware or purchased through Philips and related network infrastructure.

1.4 "Quotation" shall mean the Philips quote affixed to this schedule signed by Customer for the Philips EOI Software Solutions. Each Quotation shall list all the fees and any license limitations applicable to Customer's purchase of licenses, maintenance and support, professional services, including all installation, migration, interfacing tasks set forth on a Statement of Work. All Licenses fees, maintenance fees, subscriptions fees and professional services fees, as applicable, shall be payable per the payment terms in the Quotation.

1.5 "Statement of Work" shall mean the Philips statement of work signed by Customer and Philips at time Customer places its order to purchase EOI Software Solutions. A statement of work shall be required for EOI Software Solutions and such document shall address in general terms all interfacing and professional services delivery project scope requirements, at minimum.

1.6 "Updates" means fixes or corrections for Software bugs to enable the Software to substantially perform in accordance with its Documentation which is typically designated by a change in the third number in the series (always can be found to the right of the decimal point). Software Update is made generally available to Philips customers that are under a service or maintenance agreement or subscription term, subject to any limitations set forth in the applicable Quotations or Agreement schedule. Updates do not include new products, modules or extensions for which Philips elects to charge separately.

1.7 "Upgrades" means a new version or release of software that contains new features and enhancements to functionality and may include a change to the platform. A new version and release, under this definition, are typically designated by a change in the first or second number in the series (which can always be found to the left of the decimal point). Software Upgrades are made generally available to Philips customers that are under a service maintenance agreement or subscription term, subject to any limitations set forth in the applicable Quotations or Agreement schedule. Customer will be charged for professional services fees and other fees as a result of a change associated with the Upgrades, as detailed in the Quotation. Notwithstanding the foregoing, Upgrades do not include new products, platform, modules or extensions for which Philips elects to charge separately; provided however, such Upgrades has a substantial change from the previous major version with respect to product feature(s) or underlying technology. New optional licensable software may be available for additional software and services fees and shall not include Software changes with a version change in the first or second number in the series.

2. Payment Terms

2.1 Customer shall pay Philips invoices per the payment terms set forth in the Quotation or within 30 days of Philips' invoice date.

3. License Term and Limitations

3.1 Notwithstanding anything contrary in the Conditions of Sale, the following license terms and restrictions shall apply and govern such issues:

3.2 EOI Software Solutions Capital Model with Separate Optional Maintenance and Support Purchase Option. This model is a perpetual license to an EOI Solution, commencing upon Go-Live, subject to the license provisions in the baseline agreement and any usage limitations set forth on the quote, as well as Sections 3.5 - 3.7. Furthermore, in addition to the warranty set forth in Section 3.4, Philips shall provide the maintenance and support services set forth in Schedule 9-A affixed to this Agreement for such warranty period only. Customer's purchase of maintenance and support services post warranty of the Term License shall be provided under the terms of these Conditions of Sale, including Schedule 9-A; provided that, Customer issues a purchase order with a separate line item listing the post warranty maintenance and support purchase per the Philips post warranty service Quotation. Philips shall have no obligation to perform maintenance and support, for any period post warranty that Customer has elected not to purchase maintenance and support agreement coverage.

3.3 EOI Software Solution Subscription Option. Under the subscription service model, commencing upon Go-Live Customer receives an annual subscription license for the number of years set forth on the Quotation ("Subscription License Term"), and the maintenance and support set forth in Schedule 9-A affixed to this Exhibit for the entire Subscription License Term for one annual fee. ("EOI Software Solution Subscription Option"). Thereafter, the then current EOI Software Solution Subscription Term shall expire on the end of the last anniversary date of the Subscription License Term, unless Customer renews the subscription term prior thereto.

3.4 Products Warranties. The warranties set forth in Section 4 (except Section 4.2) in the Conditions of Sale shall apply to sales of the EOI Software Solutions purchased under Section 3.2 of this schedule.

3.5 All Licenses are subject to a limited number of sites (by physical address), users, connections and exam volume set forth in the Statement of Work. In all cases a "Site" shall mean a unique physical street address for imaging equipment that has usage information sent to or pulled by the EOI Software Solution Licensed Software and "End Users" shall mean end users that are employees or contract temporary employees by Customer legal entity. In no event shall another medical device manufacturer, distributor, or independent service organization use or have access to EOI Software Solutions.

3.6 Prior to the assignment of any Licenses, including an assignment pursuant to a purchase of substantially all of Customer's assets, organic growth or expansion plans, Customer will provide Philips with written notice along with reasonable data to determine how such events will impact the licensing limitations applicable to each License. These events may require Customer purchase additional Licenses to address a change in the number of Users, Sites, connections and Annual Exam Volume prior to the use of EOI Software Solutions for such events.

3.7 Subject to fulfillment of any payment obligations by Customer arising from the use of the EOI Software Solutions, Philips grants Customer the applicable license under the model quoted. All EOI Software Solution licenses are, non-exclusive, non-transferable and subject to compliance with the usage, rights and restrictions set forth in the Agreement and solution description on the Quotation.

3.8 Termination Fees. In the event Customer provides written termination notice other than Philips' uncured material breach or is in material breach of its obligations arising therefrom and Philips terminates the Agreement for such models, Customer shall promptly pay Philips all charges for the EOI Software Solutions provided through the date of termination plus a "Termination Charge" equal to the fees that Philips would have been entitled to receive for the balance of the Term for such licenses, maintenance and support purchased, and/or subscription period. The parties agree that all fees were negotiated based upon Customer's commitment to the full Term. Philips' damages in the event that the Term is terminated early would be difficult or impossible to ascertain. The Termination Charge is intended, therefore, to establish liquidated damages in the event of termination and is not intended as a penalty.

4. Billing based on Customer Delays and Pricing

4.1 All installations of the EOI Solutions shall commence no later than 90 days from the date Philips received a Customer order for such solution ("EOI Solution Required Installation Commencement Period"). Philips shall have the right to commence billing on the earlier of (i) Go-Live or (ii) expiration of the Required Installation Commencement Period, the later only to extent installation of an EOI Solution on a Customer Provided Hardware has not started. In all cases, acceptance for EOI solutions occurs on the License Commencement Data shall mean the date Philips makes the EOI Solution available for use to Customer upon completion of installation of such licensed software on Customer Provided Hardware.

4.2 Offset. Payment obligations for the fee set forth on a Quotation for EOI Software Solutions are independent fee obligations not subject to offset.

4.3 Subscription Service fees may be increased by Philips annually by the greater of (i) 5% per year or (ii) the most recently published 12-month percent change in the United States consumer price index for medical care services (CPI-MCS) as of the annual anniversary of Go-Live.

5. Philips Ownership in the EOI Software Solutions

5.1 The Licenses granted under these Conditions of Sale for all EOI Software Solutions offered under Sections 3.2-3.3 of this schedule shall not affect the exclusive ownership by Philips of the Licensed Software or of any trademarks, copyrights, patents, trade secrets, or other intellectual property rights of Philips (or any of Philips' suppliers) relating to the Licensed Software. Philips retains all rights, title, and interest to all intellectual property in or arising from the Licensed Software.

6. Cancellation

6.1 The term set forth on the Quotation ("Term") is non-cancellable before the expiration date of the Term. Each Quotation will commence on its respective effective date and thereafter will remain in effect forth entire Term stated therein.

7. Statement of Work for all EOI Software Solutions Subscription and Data Usage

7.1 A Statement of Work identifying the License criteria (as indicated above in Section 3.5), Customer's and Philips' responsibilities for software implementation, training and/or any professional service deliverables (as applicable) must be signed in writing by both parties and submitted with Customer's purchase order. As part of the implementation of an EOI Software Solutions, Philips shall provide benchmarking information to all of its customers in general about Customer user base as it applies to their use of the EOI Software Solution as a whole and best practice information based on lessons learned by our users. However, in doing so, Philips shall de-identify Customer data. Philips may use Customer information in support of such benchmarking deliverable and such process of de-identification shall occur on Customer's premises. Separation of such from the benchmarking database is impossible, therefore Philips shall have the right to continue using such data upon expiration of this Agreement; provided that, Philips protects it and indemnifies for such use pursuant to this Section 8. In no event shall Philips' use Customer's name in a press release or marketing materials, without the express written consent of Customer. Philips does reserve the right, and may, use benchmarking information in marketing materials or advertising to extent made in compliance with this Agreement and not attributed to one specific customer. Philips may use such de-identified information to improve the EOI Software Solutions, including serviceability thereto, as well as the Philips products to which such de-identified data arose. In all cases, such improvements are made available for purchase to all EOI customers. Philips shall defend, indemnify, and hold Customer harmless from any breach of its obligations under this Agreement with respect to permitted use of de-identified data for benchmarking purposes, marketing, advertising, or improving the serviceability of the EOI Software Solutions. A Statement of Work, if required as defined in the product schedules, must be signed in writing by both parties and submitted with Customer's purchase order. Philips may reject orders in the absence of the Statement of Work.

7.2 Philips' project personnel shall perform the tasks set forth in the Statement of Work. Philips retains all rights, title, and intellectual property, in all ideas, methods, or algorithms used by the Philips project team to fulfill any obligations under a Quotation. Customer does own a copyright to the specific Customer reports delivered by the Clinical Consultant (Solution Advisor); provided that, Customer receives a perpetual, irrevocable, non-transferable license to use such reports to support Customer's workflow improvement and technician training internal business purposes. The Clinical Consultant (Solution Advisor) is not customizing software code or reporting generation features. All rights, title, and interest, in the Licensed Software used to generate the reports and the EOI Software solution remains with Philips, except for the Licenses granted hereunder to Customer and the copyright to Customer report delivered to Customer. Notwithstanding the foregoing, Customer owns all Customer data. Philips may solely use such data to fulfill its obligations and per this Agreement.

8. Customer Provided Hardware/Customer Managed IT Support Structure

8.1 Customer Provided IT Infrastructure. Customer shall be responsible to procure all hardware (including server, storage, and client devices) and network bandwidth as set forth in the Statement of Work ("Customer Provided Hardware and IT Infrastructure"). In all cases, Customer shall be solely responsible to manage anti-virus threats as it applies to the Licensed Software and backing-up data daily. Therefore, Customer is responsible for all data loss; except for data loss solely arising from Philips providing maintenance and support on the Licensed Software remotely; further provided, Philips' responsibility in such instance shall be limited to the period of time preceding that date that Customer was obligated to perform data back-up hereunder.

8.2 Customer Client Device Types. EOI Software Solutions may solely be used with client device types and minimum configuration specifications set forth on the Statement of Work. In all cases, EOI Software Solutions are not designed nor recommended for mobile device use. Philips shall not be responsible for issues arising therefrom.

8.3 Interfaces. For those Customer's purchasing interface services listed in the statement of work, for which Philips would have to create new interface code to work with third party vendor software, Customer shall ensure that such third parties have completed such interface work for their software by the interface testing date set forth in the project plan. Any delays in meeting such date are the sole responsibility of Customer. If Customer has not fulfilled its interface obligations by such time, Philips may, at its discretion, terminate any interface obligations and refund any pre-paid amounts for interfaces, except for amounts representing the cost for work performed by Philips prior to such termination which Philips shall be entitled to retain. Customer will execute any documentation reasonably requested by Philips to document such terminated interfaces. Upon Philips issuance of a refund in accordance with this section, Customer shall be deemed to have accepted the applicable Philips products. Any interfaces terminated shall be re-evaluated under a separate new sales contract, when Customer's third-party vendor is available to perform interface testing at such time.

Schedule 9-A
Annual Maintenance and Support for the EOI Software Solutions (Rev 27)

1. TELEPHONE AND REMOTE SUPPORT

1.1 Telephone Support. Telephone and Remote Support coverage is included with all software maintenance agreements. Technical and Clinical Telephone and Remote Support coverage services are available 24 hours per day, 7 days per week including Philips-recognized holidays.

1.2 Remote Access and Diagnostics. Philips may remotely access the EOI Software Solution to perform Services. Customer shall provide Philips remote access to the EOI Solution.

1.3 On-Site Software Resolution Response. Philips primary method for software services is telephone and Philips Remote Services Data Centre ("PRSDC"). Philips, at its sole discretion, may provide on-site software support services to resolve software issues that cannot be resolved through Philips' primary resolution method. On-site service is next business day, Monday through Friday 8:00 AM to 5:00 PM local time, excluding Philips recognized holidays, and includes labor and travel necessary for the delivery of corrective services.

1.4 InCenter Access. Philips will provide Customer access to Philips web based support tool for the system(s) covered under this Agreement.

1.5 Online Education. Customer shall be entitled to unlimited access to the virtual classroom at the online Philips Learning Center during the term of the Agreement.

2. INTERFACE SUPPORT

2.1 Philips supports DICOM and HL7 communication to and from the EOI Software Solution as per Philip's standard specifications as published per message type. In the case of new software versions provided hereunder, Philips shall provide the following:

2.1.1 If the EOI Solution, interoperability mapping engine, or biomedical device is upgraded to the latest version, Philips will restore inbound and/or outbound communication to the pre-upgrade condition.

2.1.2 Philips' interface support does not include the modification of any interface due to interface changes in third party hardware or software or replacement of Philips interoperability mapping engine product with a different interoperability engine product. In the case of a planned upgrade of the EOI Solution that involves modifications to the interface specifications, Philips requires that detailed technical information on such modifications be made available to Philips at least 90 days in advance of the planned upgrade. In such a case, Philips shall work with the third party to understand changes in interface specifications and format and may modify and upgrade the EOI Solution to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and Customer. Philips is not responsible for issues arising from third party modifications to their software or interfaces that result in errors fielding inquires or sending data to an EOI Solution.

3. SOFTWARE VERSIONS AND UPDATES

If a new software version or update is available for the EOI Solution, and the requirements of the Agreement are satisfied, then Philips will upgrade the EOI Solution application software during the term of the Agreement as follows:

3.1 Philips will provide Updates and Upgrades of software versions and updates of software for the licensed EOI Solution applications originally purchased by Customer. Such Updates and Upgrades do not apply to third party software including, but not limited to client and server operating system licenses to use such updates, database software licenses, and anti-virus software (unless specifically specified in the Quotation). Such Updates and Upgrades do not include hardware updates or replacement.

3.1.1 Hardware updates and replacement. Software versions, updates and fixes may require hardware updates or replacement. In the case where hardware refresh option is not purchased, Customer is responsible for any such hardware updates or replacements. Upgrade installation and clinical support of the installation are subject to the terms of this Agreement.

3.1.2 Certain functionality and/or clinical application in current and previous software versions may not be available in future new software versions. Philips will provide supporting documentation to each of the Updates and Upgrades.

3.2 To receive an Update or Upgrade:

3.2.1 Customer must be in compliance with all terms and conditions of this Schedule and the Conditions of Sale, including the availability of PRSDC capability and access to the EOI Solution by Philips personnel;

3.2.2 Customer must identify one Customer representative, in writing to Philips, that will manage and be responsible for Customer's selection and scheduling of new software version installations under this Exhibit; and

3.2.3 The EOI Solution that will receive the Upgrade or Update must meet the specifications of the new Update or Upgrade. Customer shall provide the EOI Software Solution hardware or software necessary to meet such specifications.

3.2.4 Philips manages and maintains the lifecycle of its products and old versions of the EI Software and Services Solutions are discontinued from time to time. During the term of this Agreement, Customer shall maintain the EI Software and Services Solution at a currently supported version (or one before that) to receive Service or Upgrades under this Exhibit. In the event that Customer refuses to an Update or an Upgrade, Philips may terminate the Service Agreement since it is unable to support discontinued versions of the EOI.
**Unless specifically included elsewhere in this Agreement, software versions and updates do not include applications that were not purchased with the EOI Software Solutions, including any third party software, such as virus protection software, third party custom interface software, operating system software for client device or server hardware.

4. CUSTOMER SUCCESS MANAGEMENT SERVICES. During the term of the Agreement, Philips will assign a resource familiar with Customer account, key stakeholders, and contract coverage to provide the following:

4.1 If applicable, Philips will schedule and deliver a remote coverage and status review meeting annually, at a mutually agreeable date and time. The status meeting will focus on available entitlements and planning. The status review may outline all EOI Software Solution service issues resolved during the previous period and review any open or unresolved issues.

4.2 Prior to delivering any new software version, Philips will coordinate with Customer assigned resource to identify and mitigate dependencies relative to the software upgrade and other service agreement entitlements.

4.3 The parties will develop a dependency mitigation plan to address resource needs, hardware needs, operating system requirements, interoperability and other dependencies for the deployment of new software upgrade.

5. ANNUAL REVIEW. If applicable, Philips and Customer will annually review the EOI Solutions covered by the Agreement to match quantities of equipment, connections, site or annual exam volumes being used by Customer and to adjust price if actual usage exceeds any licenses purchased.