

## PHILIPS HEALTHCARE SERVICE AGREEMENT TERMS AND CONDITIONS

1. **SERVICES PROVIDED.** The services listed in the quotation or Attachment A (the "Services") are offered by Philips Healthcare a division of Philips North America LLC ("Philips") only under the terms and conditions described below, and on any exhibits and attachments, each of which are hereby incorporated (the "Agreement").
2. **EXCLUSIONS.** The Services do not include:
  - 2.1. Servicing or replacing components of the system other than those systems or components listed in the Exhibits and/or Attachment A (the "Covered System") that is at the listed location ("Site");
  - 2.2. Servicing System if contaminated with blood or other potentially infectious substances;
  - 2.3. Any service necessary due to: (i) a design, specification or instruction provided by Customer or Customer representative; (ii) the failure of anyone to comply with Philips' written instructions or recommendations; (iii) any combining of the Covered System with other manufacturers product or software other than those recommended by Philips; (iv) any alteration or improper storage, handling, use or maintenance of the Covered System by anyone other than Philips' subcontractor or Philips; (v) damage caused by an external source, regardless of nature, unless caused by Philips or Philips' subcontractor; (vi) any removal or relocation of the System; or (vii) neglect or misuse of the System;
  - 2.4. Any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors.
3. **CUSTOMER RESPONSIBILITIES.** During the term of this Agreement, Customer will:
  - 3.1. Ensure that the Site is maintained in a clean and sanitary condition; and that the Covered System, product or part is decontaminated prior to service, shipping or trade-in as per the Instructions in the User manual;
  - 3.2. Dispose of hazardous or biological waste generated;
  - 3.3. Maintain operating environment within Philips specifications for the Site (including temperature and humidity control, incoming power quality, incoming water quality, and fire protection system);
  - 3.4. Use the System in accordance with the published manufacturer's operating instructions.
4. **SYSTEM AVAILABILITY.** If Customer schedules service and the Covered System is not available at the agreed upon time, then Philips may cancel the service or charge the Customer at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the Covered System.
5. **PAYMENT.** All payments under this Agreement are due thirty (30) days from the date of Philips' invoice until the Agreement amount and all applicable taxes and interest are paid in full. Customer will pay interest on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law.
6. **EXCUSABLE DELAYS.** Philips is excused from performing under this Agreement when Philips' delay or failure to perform is caused by events beyond Philips reasonable control including, but not limited to, acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, terrorism, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities.
7. **TERM AND TERMINATION**
  - 7.1. The term of this Agreement shall be set forth in the quotation and/or Attachment A attached hereto and incorporated herein.
  - 7.2. This Agreement is non-cancelable by Customer and will remain in effect for the term specified in this Agreement. However, Customer may cancel this Agreement upon 60 days written notice to Philips (i) representing that the Covered System is being permanently removed from use and that the Covered System is not being used in any other Customer site, or (ii) specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such 60 day notice period.
  - 7.3. In addition, if the Customer sells or otherwise transfers their business or a majority of their Covered Systems to a third party and the Covered Systems remains installed and in use at the same location, but such third party does not assume the obligations of the Customer under this Agreement or enter into a new service agreement with Philips with a term at least equal to the unexpired term of this Agreement, then the Customer may terminate this Agreement with respect to such Covered Systems upon no less than thirty (30) days prior written notice to Philips, in which case the Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to 30% of the remaining payments due under this Agreement for such Covered System from the date of termination through the scheduled expiration of the term of this Agreement.
  - 7.4. If this Agreement includes a Pool and terminates for any reason and Customer has expended more funds from its Pool than it has contributed to the Pool, then Customer shall pay Philips the amount by which its expenditures exceeded its contributions within thirty (30) days of such termination.
8. **DEFAULT.** Customer's failure to pay any amount due under this Agreement within 30 days of when payment is due constitutes a default of this Agreement and all other agreements between Customer and Philips. In such an event, Philips may, at its option, (i) withhold performance under this Agreement and any or all of the other agreements until a reasonable time after all defaults have been cured, (ii) declare all sums due and to (iii) commence collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, and reasonable attorney's fees, (iv) terminate this Agreement with 10 days' notice to Customer, and (v) pursue any other remedies permitted by law.

9. **END OF LIFE.** If Philips determines that its ability to provide the service coverage is hindered due to the unavailability of parts or trained personnel, or that the system can no longer be maintained in a safe or effective manner as determined by Philips, then Philips may terminate this Agreement upon written notice to the Customer and provide Customer with a refund of any Customer pre-payments for periods of service coverage not already completed.
10. **WARRANTY DISCLAIMER.** Philips' full contractual service obligations to Customer are described in this Agreement. Philips provides no additional warranties under this Agreement. All service and parts to support service under this Agreement are provided AS IS. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY PHILIPS' SUBCONTRACTOR OR PHILIPS.
11. **LIMITATIONS OF LIABILITY AND DISCLAIMER.**
- 11.1 Philips' total liability, if any, and Customer's exclusive remedy with respect to the Services or Philips' performance of the Services is limited to an amount not to exceed the price stated in this Agreement for the Service that is the basis for the claim. THIS LIMITATION SHALL NOT APPLY TO THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE. PHILIPS WILL HAVE NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS AGREEMENT.
- 11.2 IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.
12. **PROPRIETARY SERVICE MATERIALS.** Philips may deliver or transmit certain proprietary service materials (including software, tools and written documentation) that have not been purchased by or licensed to Customer. The presence of this property within the Site will not give Customer any right or title to this property or any license or other right to access, use or decompile this property. Customer will use all reasonable efforts to protect this property against damage or loss and to prevent any access to or use of this property by any unauthorized party. Customer shall immediately report to Philips any violation of this provision.
13. **THIRD PARTY MANAGEMENT.** If Customer has contracted with a third party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization or the like ("Third Party Organization") for purposes of centralized billing and management of services provided to Customer, at Customer's written request, Philips will route invoices for payment of services rendered by Philips to such Third Party Organization and accept payment from them on Customer's behalf. Notwithstanding the above, the services provided by Philips are subject solely to the terms and conditions set forth in this Agreement. Customer guarantees the payment of all monies due or that may become due under this Agreement in spite of any collateral arrangements Customer may have with such Third Party Organization or any payments Customer has made to the Third Party Organization. Philips has no contractual relationship for the Services rendered to Customer except as set forth herein. To the extent that the parts and services Philips provides are not covered by Customer's arrangement with such Third Party Organization, Customer shall promptly pay for such parts and services on demand.
14. **TAXES.** Any applicable tax will be invoiced to and payable by Customer, along with the Agreement Price in accordance with the payment terms set forth in this Agreement, unless Philips receives a tax exemption certificate from Customer which is acceptable to the taxing authorities. Customer will not be obligated to pay any federal, state, or local tax imposed upon or measured by Philips' net income.
15. **INDEPENDENT CONTRACTOR.** Philips is Customer's independent contractor, not Customer's employee, agent, joint venture, or partner. Philips' employees and Philips subcontractors are under Philips' exclusive direction and control. Philips has no liability or responsibility for and does not warrant customer's or customer's employees' act or omissions related to any services that are performed by customer's employees under this agreement.
16. **RECORD RETENTION AND ACCESS.** If Section 1861(v)(1)(I) of the Social Security Act applies to this Agreement, then Subsections (i) and (ii) of that Section are made a part of this Agreement. In such an event, Philips shall retain and make available, and insert the requisite clause in each applicable subcontract requiring Philips subcontractor to retain and make available, the contract(s), book(s), document(s), and record(s) to the person(s), upon the request(s) for the period(s) of time required by these Subsections.
17. **HIPAA, PRIVACY.** Philips complies with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Upon Customer request Philips will provide a mutually agreeable Business Associates agreement. In the course of providing the Services to Customer, Philips may need to access, view, or download computer files from the System that might contain Personal Data. Personal Data includes information relating to an individual, from which that individual can be directly or indirectly identified. Personal Data can include both personal health information (e.g., images, heart monitor data, and medical record number) and non-health information (e.g., date of birth and gender). Philips will process Personal Data only to the extent necessary to fulfill its Service obligations under this Agreement.

18. **CONFIDENTIALITY.** Each party will 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, or its patients, and this Agreement and its terms, including its pricing terms. Each party will 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 not less than reasonable care. Each party will disclose such information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement. The obligation to maintain the confidentiality of such information will not extend to information in the public domain at the time of disclosure, or to information that is required to be disclosed by law or by court order and will expire five years after the Exhibit terminates or expires.
19. **SUBCONTRACTS AND ASSIGNMENTS.** Philips may subcontract to service contractors of Philips' choice any of Philips' service obligations to Customer or other activities performed by Philips under this Agreement. No such subcontract will release Philips from those obligations to Customer. Customer may not assign this Agreement or the responsibility for payments due under it without Philips' prior express written consent, which will not be unreasonably withheld.
20. **INSURANCE.** Upon Customer request, Philips will provide a Certificate of Philips insurance coverage.
21. **RULES AND REGULATIONS.** To the extent made known in writing to Philips, Philips and its subcontractors will comply with Customer's rules and regulations provided such rules and regulations do not conflict with established Philips policies.
22. **EXCLUDED PROVIDER.** Philips represents and warrants that Philips, its employees, and subcontractors, are neither debarred, excluded, suspended, or otherwise ineligible to participate in a federal health care program, nor have they been convicted of any health care related crime for the products and services provided under this Agreement (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors, providing the Services becomes an Excluded Provider, whereupon Customer may terminate this order by express written notice for services not yet rendered.
23. **SOLICITATION OF PHILIPS EMPLOYEES.** For the duration of this Agreement and for one year following the expiration or termination of this Agreement, Customer and its affiliates will not directly or indirectly solicit any employee of Philips or its affiliates engaged in providing the services.
24. **SURVIVAL, WAIVER, SEVERABILITY, NOTICE, CHOICE OF LAW.** Customer's obligation to pay any money due to Philips under this Agreement survives expiration or termination of this Agreement. All of Philips' rights, privileges, and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement. A party's failure to enforce any provision of this Agreement is not a waiver of that provision or of such party's right to later enforce each and every provision. If any part of this Agreement is found to be invalid, the remaining part will be effective. Notices or other communications will be in writing, and will 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 on the face of this Agreement. This Agreement may be executed in one or more counterpart copies, each of equal validity, that together constitute one and the same instrument. Any photocopy or facsimile of this Agreement or any such counterpart is deemed the equivalent of an original and any such facsimiles constitute evidence of the existence of this Agreement. The law of the state in which the Covered System is located will govern any interpretation of this Agreement and dispute between Philips and Customer without regard to the principles of choice of law.
25. **ENTIRE AGREEMENT; EXHIBITS.** This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, written or oral, regarding its subject matter. No additional terms, conditions, consent, waiver, alteration, or modification will be binding unless in writing and signed by Philips' authorized representative and Customer. Additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are rejected and will not apply to the transactions contemplated by this Agreement. No prior proposals, statements, course of dealing, course of performance, usage of trade or industry standard will be part of this Agreement. The service specific exhibits listed below, and any associated attachments, are incorporated herein as they apply to the services listed on the quotation and their additional terms shall apply solely to Customer's purchase of the services specified therein. If any terms set forth in an exhibit conflict with terms set forth in these Terms and Conditions of Service, the terms set forth in the exhibit shall govern.
- Exhibit 1: Additional Imaging System Service Terms and Conditions  
Exhibit 2: Philips Technology Upgrades  
Exhibit 3: Additional Support & Assist Coverage Terms and Conditions  
Exhibit 4: Uptime Guarantee  
Exhibit 5: Additional Clinical Education Training Terms and Condition  
Exhibit 6: Additional Software Maintenance Agreement Terms and Conditions  
Exhibit 7: Software Maintenance Agreement Hardware Support  
Exhibit 8: Additional Patient Care Services Terms and Conditions
26. **AUTHORITY TO EXECUTE.** The parties acknowledge that they have read the terms and conditions of this Agreement, that they know and understand the same, and that they have the express authority to execute this Agreement.