

**GENERAL TERMS AND CONDITIONS OF SALE AND SOFTWARE LICENSE**  
**("Conditions of Sale") Rev 20(T)**

**1. Initial Provisions.**

- 1.1 The Products (equipment, service, and software) offered on the quotation by the Philips legal entity identified thereon are subject to these Conditions of Sale.
- 1.2 The purchase prices set out on the quotation excludes all taxes. All taxes on the Products will be borne by the Customer unless Customer provides a tax exemption certification.

**2. Quotation, Order and Payment.**

- 2.1 Any quotation on the Products will be open for acceptance within the period indicated therein and may be amended or revoked by Philips prior to Customer's acceptance. Any purchase orders shall be subject to Philips' confirmation. Any terms and conditions set forth on the Customer's purchase order or otherwise issued by the Customer shall not apply to the Products.
- 2.2 The prices and payment terms are set out on the quotation. Orders are subject to Philips' ongoing credit review and approval. If the quotation 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 the payment method that Customer elected in its purchase order or signed quote. Prior to invoice, Customer may modify the payment method by providing Philips with an amended purchase order that reflects the new payment method and corresponding price.
- 2.3 Interest will apply to any late payments. Customer shall pay interest on any overdue amount not actively disputed paid at the annual rate of twelve percent (12%) which may be billed monthly. If the Customer fails to pay any amounts due or breaches these Conditions of Sale, Philips will be entitled to suspend the performance of its obligations and deduct the unpaid amount from any amounts otherwise owed to Customer by Philips, in addition to any other rights or remedies available to Philips. Philips shall be entitled to recover all costs and expenses, including reasonable attorneys' fees related to the enforcement of its rights or remedies.
- 2.4 Customer has no right to cancel an order, 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 a 15% cancellation fee.
- 2.5 Philips may make partial or early shipments and Customer will pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the quotation.
- 2.6 Payments may be made by check, ACH or wire. Philips does not accept transaction fees for any electronic fund transfers or any other payment method. All check payments over \$50,000 usd must be paid via eCheck or via Philips prepaid FedEx account with tracking to secure against fraud and misappropriation.

**3. Philips Security Interest until Full Payment.**

- 3.1 Philips is entitled to retain a security interest in the Philips products, until Philips receives full payment.

**4. Technical Changes; Obsolescence of the Product.**

- 4.1 Philips shall be entitled to make changes to the design or specifications of the Products at any time, provided such change does not adversely affect the performance of the Products.

**5. Lease and Trade In**

- 5.1 If the Customer desires to convert the purchase of any Products to a lease the Customer shall within ninety (90) prior to the delivery of the Products provide all relevant rental documents for review and approval by Philips. The Customer is responsible for converting the transaction to a lease and is required to secure the leasing company's approval of all these Conditions of Sale. No product will be delivered to the Customer until Philips has received copies of the fully executed lease documents and has approved the same. For any lease, if the lease does not fund then: (i) Customer guarantees the payment of all monies due or that may become due under these Conditions of Sale; (ii) Philips may convert the lease back to a purchase and invoice Customer; accordingly, and (iii) Customer will pay all such invoiced amounts per the invoice terms. In the event that there are multiple Products on one quote, the Product with the longest period for converting the transaction to a lease shall prevail.
- 5.2 Philips may provide a rental agreement at its discretion.
- 5.3 In the event Customer will be trading-in equipment ("Trade-In"), the Customer will provide the following:
  - 5.3.1 Customer undertakes to possess good and marketable title to the Trade-In as of the date of the quotation and when Philips takes possession of the Trade-in from Customer's site. In the event Customer is in breach of this

undertaking, Customer shall not be entitled to keep a trade-in credit for such Trade-In and shall promptly refund Philips such credited amounts upon receipt of an invoice from Philips.

5.3.2 The trade-in value set forth on Philips quotation is conditioned upon Customer providing Trade-In no later than the date Philips makes the new Product listed on such quotation available for first patient use. Customer shall bear the costs of any reduction in trade-in value arising due to a delay by the Customer causing the trade-in not to occur by the expected date and promptly pay the revised invoice.

5.3.3 In the event Philips receives a Trade-In having a different configuration (including software version) or model number than the Trade-In described on the Philips quotation, Philips reserves the right to adjust the trade in value and revise the invoice accordingly and Customer shall pay such revised invoice promptly upon receipt.

5.3.4 Customer undertakes to (i) clean and sanitize all components that may be infected and all biological fluids from the Trade-In; (ii) drain any applicable chiller lines and cap any associated plumbing and (iii) delete all personal data in the Trade-In. Customer agrees to reimburse Philips against any out-of-pocket costs incurred by Philips arising from Customer's breach of its obligations herein.

## **6. Shipment and Delivery Date.**

6.1 Philips shall deliver the Products in accordance with the Incoterms set forth on the quotation. If Philips and the Customer agree any other terms of delivery, additional costs shall be for the account of the Customer. Title (subject to Section 3 entitled Philips Security Interest) to any product (excluding software), and risk of loss shall pass to the Customer upon delivery to the shipping carrier. However, Philips shall pay the cost of freight and risk insurance (during transport to destination). Customer shall obtain and pay insurance covering such risks at destination.

6.2 Philips will make reasonable efforts to meet delivery dates quoted or acknowledged. Failure to deliver by the specified date will not be a sufficient cause for cancellation nor will Philips be liable for any penalty, loss, or expense due to delay in delivery. If the Customer causes the delay, any reasonable expenses incurred by Philips will be paid for by Customer, including all storage fees, transportation expenses, and related costs. If the delay is more than fourteen (14) days, the Customer shall pay the full purchase price for the Products immediately to Philips.

## **7. Installation.**

7.1 If Philips has undertaken installation of the Products, the Customer shall be responsible for the following at its sole expense and risk:

7.1.1 The provision of adequate and lockable storage for the Products on or near the installation site. Additionally, Customers shall consider the mfg. labeling requirements for environmental and storage conditions. The Customer will repair or replace any lost or damaged item during the storage period.

7.1.2 Philips or its (affiliate's) representative shall have access to the installation site without obstacle or hindrance in due time to start the installation work at the scheduled date.

7.1.3 The timely execution and completion of the preparatory works, in conformity with Philips' installation requirements. The Customer shall ensure that the prepared site shall comply with all safety, electrical and building codes relevant to the Products and installation thereof.

7.1.4 The proper removal and disposal of any hazardous material at the installation site prior to installation by Philips.

7.1.5 The timely provision of all visa, entry, exit, residence, work or any other permits and licenses necessary for Philips' or Philips' representatives' personnel and for the import and export of tools, equipment, Products, and materials necessary for the installation works and subsequent testing.

7.1.6 The assistance to Philips or Philips' representative for moving the Products from the entrance of the Customer's premises to the installation site. The Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, and restoration work.

7.2 If Products are connected to a computer network, the Customer shall be responsible for network security, including but not limited to, using secure administrative passwords, installing the latest validated security updates of operating software and web browsers, running a Customer firewall as well as maintaining up-to-date drivers, validated anti-virus and anti-spyware software. Unauthorized Updates, as defined in the Product Schedules, may adversely affect the functionality and performance of the Licensed Software.

7.3 If any of the above conditions are not complied with, Philips or Philips' representative may interrupt the installation and subsequent testing for reasons not attributable to Philips and the parties shall extend the period for completing the installation. Any additional costs shall be for the Customer's account and Philips shall have no liability for any damage resulting from or in connection with the delayed installation.

7.4 Philips shall have no liability for the fitness or adequacy of the premises or the utilities available at the premises for installation or storage of the Products.

## **8. Product Damages and Returns.**

- 8.1 The following shall apply solely to medical consumables:  
The Customer shall notify Philips in writing substantiating its complaints within ten (10) days from its receipt of the Products. If Philips accepts the claim as valid, Philips shall issue a return authorization notice and the Customer shall return the Products. Each returned Product shall be packed in its original packaging.

## 9. **Product Warranty.**

- 9.1 In the absence of any specific Product warranty attached to the quotation, the following warranty provisions will apply to the Product.
- 9.2 **Hardware Products.** Philips warrants to Customer that the Product shall materially comply with its product specification on the quotation and the user documentation accompanying the shipment of such Product for a period of one year from the date of acceptance or first clinical use, whichever occurs first, but under any circumstances, no more than fifteen (15) months from the date of shipment, provided the Product has been subject to proper use and maintenance. Any disposable Product intended for single use supplied by Philips to the Customer will be of good quality until the expiration date applicable to such Product.
- 9.3 **Stand-alone Licensed Software Products.** Philips warrants that the Stand-alone Licensed Software shall substantially conform to the technical specification for a period of ninety (90) days from the date Philips makes such Stand-alone Licensed Software available to the Customer. "Stand-alone Licensed Software" means Licensed Software sold without a contemporaneous purchase of a server for the Licensed Software.
- 9.4 **Service.** Philips warrants that all services will be carried out with reasonable care and skill. Philips' sole liability and Customer's sole remedy for breach of this warranty shall be at its option to give credit for or re-perform the services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the services.
- 9.5 Customer shall only be entitled to make Product warranty claim if Philips receives written notice of the defect during the warranty period within ten (10) days from the Customer discovering the defect and, if required the Product or the defective parts shall be returned to an address stated by Philips. Such defective parts shall be the property of Philips after their replacement.
- 9.6 Philips' warranty obligations and Customer's sole remedy for the Product shall be limited, at Philips' option, to the repair or replacement of the Product or any part thereof, in which case the spare parts shall be new or equivalent to new in performance, or to the refund of a pro rata portion of the purchase price paid by the Customer solely after a reasonable cure period is given to Philips.
- 9.7 Philips' warranty obligations shall not apply to any defects resulting from:
- 9.7.1 improper or unsuitable maintenance, configuration or calibration by the Customer or its agents.
  - 9.7.2 use, operation, modification, or maintenance of the Product not in accordance with the Product specification and the applicable written instructions of Philips or performed prior to the completion of Philips' validation process.
  - 9.7.3 abuse, negligence, accident, damages (including damage in transit) caused by the Customer.
  - 9.7.4 improper site preparation, including corrosion to Product caused by Customer.
  - 9.7.5 any damage to the Product or any medical data or other data stored, caused by an external source (including viruses or similar software interference) resulting from the connection of the Product to a Customer network, Customer client devices, a third-party product or use of removable devices.
- 9.8 Philips is not responsible for the warranty for the third-party product provided by Philips to the Customer and Customer shall make any warranty claims directly with such vendors. However, if Philips, under its license agreement or purchase agreement with such third party, has right to warranties and service solutions, Philips shall make reasonable efforts to extend to the Customer the third-party warranty and service solutions for such Products.
- 9.9 During the term of the warranty and any customer service arrangement the Customer shall provide Philips with a dedicated high-speed broadband internet connection suitable to establish a remote connection to the Products in order for Philips to provide remote servicing of the Products by:
- 9.9.1 supporting the installation of a Philips approved router (or a Customer-owned router acceptable for Philips) for connection to the Products and Customer network (which router remains Philips property if provided by Philips and is only provided during the warranty term).
  - 9.9.2 maintaining a secure location for hardware to connect the Products to the Philips Remote Service Data Center (PRSDC).
  - 9.9.3 providing and maintaining a free IP address within the site network to be used to connect the Products to the Customer's network
  - 9.9.4 maintaining the so established connection throughout the applicable period.
  - 9.9.5 facilitating the reconnection to Philips in case any temporary disconnection occurs.

If Customer fails to provide the access described in this section and the Product is not connected to the PRSDC (including any temporary disconnection), Customer accepts any related impact on Products availability, additional cost, and speed of resolution.

9.9.6 THE WARRANTIES SET FORTH IN THIS CONDITIONS OF SALE AND QUOTATION ARE THE SOLE WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PHILIPS EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MOREOVER, PHILIPS DOES NOT WARRANT ANY PRODUCT USING THE CLOUD TO BE UNINTERRUPTED OR ERROR FREE.

## **10. Limitation of Liability.**

10.1 THE TOTAL LIABILITY OF PHILIPS ARISING UNDER OR IN CONNECTION WITH THE PRODUCT FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS, WARRANTY, NEGLIGENCE, UNLAWFUL ACT OR OTHERWISE IN CONNECTION WITH THE PRODUCT IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.

10.2 PHILIPS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES AND/OR FOR ANY DAMAGES INCLUDING, LOSS OF DATA, PROFITS, REVENUE, BUSINESS INTERRUPTION OR USE IN CONNECTION WITH OR ARISING OUT OF THESE CONDITIONS OF SALE, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT AND WHETHER THE CLAIM IS MADE IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, AT LAW OR IN EQUITY. NEITHER PHILIPS NOR PHILIPS' SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OR INABILITY TO USE MEDICAL OR OTHER DATA STORED ON OR BY THE PRODUCT.

10.3 THE EXCLUSION OF LIABILITY IN THESE CONDITIONS OF SALE SHALL ONLY APPLY TO THE EXTENT ALLOWED UNDER THE APPLICABLE LAW.

10.4 FOR US CUSTOMERS, THE FOLLOWING ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY UNDER SECTION 10.1:

10.4.1 THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT.

10.4.2 CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT.

10.4.3 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 PROTECTED HEALTH INFORMATION.

10.4.4 FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

## **11. Infringement of Intellectual Property Rights to the Products.**

11.1 Philips will, at its option and expense, defend or settle any suit or proceeding brought against Customer based on any third-party claim that any Product or use thereof for its intended purpose constitutes an infringement of any intellectual property rights in the country where the Product is delivered by Philips.

11.2 Customer will promptly give Philips written notice of such claim and the authority, information and assistance needed to defend such claim. Philips shall have the full and exclusive authority to defend and settle such claim. Customer shall not make any admission which might be prejudicial to Philips and shall not enter a settlement without Philips' prior written consent.

11.3 If the Product is held to constitute infringement of any intellectual property right and its use by Customer is enjoined, Philips will, at its option and expense, either: (i) procure for Customer the right to continue using the Product; (ii) replace it with an equivalent non-infringing Product; (iii) modify the Product so it becomes non-infringing; or (iv) refund to the Customer a pro rata portion of the Products' purchase price upon the return of the original Products.

11.4 Philips will have no duty or obligation under this clause 11 if the infringement is caused by a Product being:

11.4.1 supplied in accordance with Customer's design, specifications or instructions and compliance therewith has caused Philips to deviate from its normal course of performance.

11.4.2 modified by Customer or its contractors after delivery.

11.4.3 not updated by Customer in accordance with instructions provided by Philips (e.g. software updates).

11.4.4 combined by Customer or its contractors with devices, software, methods, systems, or processes not furnished hereunder and the third-party claim is based on such modification or combination.  
The above states Philips' sole liability and Customer's exclusive remedy in respect of third-party intellectual property claims.

## **12. Use and exclusivity of Product documents.**

12.1 All documents and manuals including technical information related to the Products and its maintenance as delivered by Philips is the proprietary information of Philips, covered by Philips' copyright, and remains the property of Philips, and as such, it shall not be copied, reproduced, transmitted, or disclosed to or used by third parties without the prior written consent of Philips.

## **13. Export Control and Product Resale.**

13.1 Customer agrees to comply with relevant export control and sanction laws and regulations, including the UN, EU or US ("Export Laws"), to ensure that the Products are not (i) exported or re-exported directly or indirectly in violation of Export Laws; or (ii) used for any purposes prohibited by the Export Laws, including military end-use, human rights abuses, nuclear, chemical or biological weapons proliferation.

13.2 Customer represents that (i) Customer is not located in a country that is subject to a UN, US or EU embargo and trade restriction; and (ii) Customer is not listed on any UN, EU, US export and sanctions list of prohibited or restricted parties.

13.3 Philips may suspend its obligation to fulfil any order or subsequent service if the delivery is restricted under Export Laws or an export/import license is not granted by relevant authorities.

## **14. License Software Terms.**

14.1 Subject to any usage limitations set forth on the quotation, Philips grants to Customer a non-exclusive, non-transferable license, without the right to grant sub-licenses, to incorporate and use the Licensed Software (as specified on the quotation, whether embedded or stand-alone) in Licensed Products and the permitted use (as referenced in the quotation) in accordance with these Conditions of Sale.

14.2 The Licensed Software is licensed and not sold. All intellectual property rights in the Licensed Software shall remain with Philips.

14.3 Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Customer may not reproduce, sell, assign, transfer or sublicense the Licensed Software. Customer shall preserve the confidential nature of the Licensed Software and shall not disclose or transfer any portion of the Licensed Software to any third party.

14.4 Customer shall maintain Philips' copyright notice or other proprietary legends on any copies of the Licensed Software. Customer shall not (and shall not allow any third party to) decompile, disassemble, or reverse engineer the Licensed Software.

14.5 The Licensed Software may only be used in relation to Licensed Products or systems certified by Philips. If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the Products shall become null and void. Customer installation of Philips' issued patches or updates shall not be deemed to be a modification.

14.6 Philips and its affiliates shall be free to use any feedback or suggestions for modification or enhancement of the Licensed Software provided by Customer, for the purpose of modifying or enhancing the Licensed Software as well as for licensing such enhancements to third parties.

14.7 With respect to any third-party licensed software, the Customer agrees to comply with the terms applicable to such licensed software. Customer shall indemnify Philips for any damage arising from its failure to comply with such terms. If the third-party licensor terminates the third party license, Philips shall be entitled to terminate the third party license with the Customer and make reasonable effort to procure a solution.

## **15. Confidentiality.**

15.1 If any of the parties have access to confidential information of the other party, it shall keep this information confidential. Such information shall only be used if and to the extent that it is necessary to carry out the concerned transactions. This obligation does not extend to public domain information and/or information that is disclosed by operation of law or court order.

## **16. Compliance with Laws and Privacy.**

16.1 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 quotation, 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]).

16.2 Processing of personal data: In relation to the provision of services, Philips may process information, in any form, that can relate to identified or identifiable individuals, which may qualify as personal data. Philips and/or its affiliates will: a) process any protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on behalf and by instruction of the Customer, the terms, rights and responsibilities of the Parties for such processing of PHI are set forth in a Business Associate Agreement between the parties and b) process information such as log files or device parameters (which may contain personal data), to provide the services and to enable its compliance with and performance of its task as manufacturer of (medical) devices under the applicable regulations and standards (including but not limited to the performance of vigilance, post market surveillance and clinical evaluation related activities).

16.3 Customer agrees that Philips and/or its affiliates may use any data, other than personal data, generated by a Product and/or otherwise provided by Customer to Philips for Philips' own legitimate business purposes including, but not limited to, for data analytics activities to determine trends of usage and advise on the use of 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.

## 17. **Force Majeure.**

17.1 Each party shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil war, insurrection, fire, flood, labor disputes, epidemics, pandemic, cyber-attack, act of terrorism, governmental regulations and/or similar acts, embargoes, export control sanctions or restrictions, Philips' unavailability regarding any required permits, licenses and/or authorizations, default or force majeure of suppliers or subcontractors.

17.2 If force majeure prevents Philips from fulfilling any order from the Customer or otherwise performing any obligation arising out of the sale, Philips shall not be liable to the Customer for any compensation, reimbursement, or damages.

## 18. **Miscellaneous**

18.1 Any newly manufactured Product provided may contain selected remanufactured parts equivalent to new in terms of performance.

18.2 If the Customer becomes insolvent, unable to pay its debts as they fall due, files for bankruptcy or is subject to it, has appointed a recipient, is subject to a late fee on payments (temporary or permanent), or has its assets assigned or frozen, Philips may cancel any unfulfilled obligations or suspend its performance; provided that, however, the Customer's financial obligations to Philips shall remain in full force and effect.

18.3 If any provision of these Conditions of Sale is found to be unlawful, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall remain in full force and effect. In lieu of any provision deemed to be unlawful, unenforceable, or invalid, in whole or in part, a provision reflecting the original intent of these Conditions of Sale, to the extent permitted by the applicable law, shall be deemed to be a substitute for that provision.

18.4 Notices or other communications shall be given in writing and shall be deemed effective if they are delivered in person or if they are sent by courier or mail to the relevant party.

18.5 The failure by the Customer or Philips at any time to require compliance with any obligation shall not affect the right to require its enforcement at any time thereafter.

18.6 Philips may assign or novate its rights and obligations in whole or in part, to any of its affiliates or may assign any of its accounts receivable to any party without Customer's consent. Customer agrees to execute any documents that may be necessary to complete Philips' assignment or novation. The Customer shall not, without the prior written consent of Philips, transfer or assign any of its rights or obligations

18.7 The Customer's obligations do not depend on any other obligations it may have under any other agreement or arrangement with Philips. The Customer shall not exercise any offset right in the quotation or sale in relation to any other agreement or arrangement with Philips.



- 18.8 These Conditions of Sale shall be governed by the laws of the country or state wherein the Philips legal entity identified in the quotation is situated, and the parties submit to the exclusive jurisdiction of the courts of that country or state, provided that Philips will be entitled to start legal proceedings against the Customer in any other court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA), in any form, is expressly excluded.
- 18.9 Customer will report immediately to Philips any event of which Customer becomes aware that suggests that any Products provided by Philips, for any reason:
- 18.9.1 may have caused or contributed to a death or serious injury, or
- 18.9.2 have malfunctioned where such malfunctions would likely 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 Products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Products provided by Philips hereunder, unless otherwise required by law.
- 18.10 To the extent applicable to your country or state, 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 Products pursuant to these Conditions of Sale, 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 Conditions of Sale 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 Conditions of Sale 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 Products 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 Conditions of Sale. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.
- 18.11 As of the date of the sale of this Product, 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 Products provided under these Conditions of Sale (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing Products 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 Products not yet shipped or rendered prior to a date of exclusion.
- 18.12 To the extent applicable to your country or state, 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.
- 18.13 To the extent applicable, Customer acknowledges it shall comply with all Medicare, Medicaid or state cost reporting requirements, including discounts afforded to Customer under these Conditions of Sale, for any Products purchased hereunder.

## 19. **Product specific terms**

Product specific schedules are incorporated herein as they apply to the Products listed in the quotation and their additional terms shall apply solely to the Products specified therein. If any terms set forth in the Product specific schedules conflict with terms set forth in these Conditions of Sale, the terms set forth in the Product specific schedule shall take precedent.

**Schedule 1**  
**Imaging Systems Portfolio (IS) Rev 20(T)**

Product Category	Products
Image Guided Therapy (IGT)	Interventional X-Ray (iXR)
	Mobile C-Arms (Surg)
	Philips Image Guided Therapy Corporation (IGTD)/fka Volcano
Imaging Clinical Applications (ICAP)	IntelliSpace Portal (ISP)
Diagnostic Imaging	Digital X-Ray (DXR)
	Computed Tomography (CT)
	Magnetic Resonance (MR)
	OEM Imaging Components (Coils)
	Positron Emission Tomography (PET/CT)
	Advanced Molecular Imaging (SPECT & SPECT/CT)
	Radiation Oncology (PROS)

**1. Payment Terms.**

Unless otherwise specified in the quotation, Philips will invoice Customer and Customer will pay such invoice based on the date of the invoice for each of the products and integration services as follows:

**1.1 For Imaging Systems Portfolio:**

- 1.1.1 0% of the purchase price shall be due with Customer's submission of its purchase order.
- 1.1.2 80% of the purchase price shall be due on delivery of the major components of the product. Product installation will not begin until Customer has paid this portion of the purchase price.
- 1.1.3 20% of the purchase price shall be invoiced to the Customer on the date the product is available for first patient use. Available for first patient use means the product has been installed and substantially meets Philips' published specifications.
- 1.1.4 Payment is due net thirty (30) days from Philips' invoice date.

**2. Additional Customer Installation Obligations for Magnetic Resonance (MR).**

- 2.1 Customer shall provide any and all site preparation and shall be in compliance with all radio frequency (RF) or magnetic shielding and acoustical suppression and building codes relevant to the Product and its installation and use.
- 2.2 If applicable, Customer's contractor or Customer's architect is required to provide detailed information on the proposed Helium Exhaust Pipe for their MRI system prior to installation to ensure safety specifications are being met.  
  
 Required Details include:
  - 2.2.1 Architectural drawing or sketch with complete dimensions including lengths, bending radii, bending angles, and pipe diameters for entire Helium Exhaust Pipe run from RF enclosure to discharge location.
  - 2.2.2 Completed Helium Exhaust Pipe Verification Checklist (Provided by Local Philips Project Manager)
  - 2.2.3 Picture showing the area where the Helium Exhaust Pipe will discharge.
- 2.3 If applicable, Magnets will not be released for delivery unless and until Helium Exhaust Pipe details are provided for verification and have been confirmed to meet all life safety specifications.
- 2.4 Costs of equipment preservation, to ensure a high-quality system, will be passed to the Customer if the installation site is not ready due to delays not caused by Philips. Additionally, climate control costs during and after equipment installation are also the responsibility of the Customer. Preservation of equipment is required to prevent exposing equipment to the negative effects of a non-climate-controlled construction environment, where there is dust or high humidity. Climate control could include costs associated with ensuring a climate-controlled environment. Activities and expenses required for preservation may include time, materials, and transportation to package and seal, and transport the equipment to a controlled environment to prevent dust from entering the equipment. For MR, as may be applicable, this includes the consumption of Helium for life support.

**3. Further use of System Data.**

- 3.1 **Mandatory Data.** Customer acknowledges and agrees that by executing this Agreement and using the Licensed Software, it has agreed that product inventory and crash signature data generated by the Licensed Software shall be delivered into



the custody of Philips, or of systems maintained on Philips' behalf, without notice to Customer. Such data is referred to herein as "Mandatory Data" and such data is described in the Licensed Software's documentation for each Licensed Software release; the data comprising Mandatory Data is subject to change with each release of upgrades, updates, patches and modifications to the Licensed Software.

- 3.2 Customer agrees that any Mandatory Data will be the property of Philips. Part of the Mandatory Data might constitute (non-sensitive) Personal Data, which is anonymized data or aggregate log files, device parameters and other signals collected from the equipment used by Customer and associated with Customer. Customer agrees that Philips may use and disclose Mandatory Data for Philips' own business purposes (including, but not limited to, for data analytics activities to determine trends of usage of Philips' or its affiliates' devices and services, to facilitate and advise on continued and sustained use of Philips' or its affiliates' products and services, for product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes). In connection with any disclosure of Mandatory Data, Philips will not associate such data with the Personal Data of Customer's patients, consumers, or employees.

**Schedule 1-A**  
**Digital Computational Pathology Portfolio (DCP) Rev 20(T)**

Product Category	Products
Digital Computational Pathology(DCP) Products	Image Management System (IMS)
	Ultra Fast Scanner (UFS)

The following Schedule 1-A shall apply to Digital Computational Pathology Portfolio (DCP) only. The afore-referenced Schedule 1 shall not be applied to DCP.

**1. Definitions.**

- 1.1 "Products" means, collectively, the equipment, system, Philips IntelliSite Pathology Solution, including the IMS and UFS, integration services and other products as described within the applicable Philips quotation.
- 1.2 "Project Implementation Plan" shall mean, if a Statement of Work is included in the Quotation (SOW) or otherwise created after award of the contract, the project management implementation plan, mutually agreed to by the parties, that sets timetables and the order of project rollout for the work scope set forth in the SOW, if and as applicable to the Products purchased.
- 1.3 "Authorized Users" of the Product shall mean persons reviewing pathology images or those requiring administrative access to patient records and images scanned into the Image Management System, as authorized by Customer, in support of performance of such services.
- 1.4 "Acceptance" means the following:  
 For Equipment: Acceptance means the Product(s) has been successfully installed by Philips at the Customer's site, substantially meets Philips' functionality for the Product(s) as set forth in the applicable Philips documentation for the Product and is available for first clinical use. Upon successful installation, Customer will sign the Philips acceptance form provided by Philips as acknowledgement that installation is complete and accepted by Customer. In the event that Product Integration is included in the scope of a project, Integration will not commence until Philips' receipt of the Equipment acceptance form signed by Customer.  
  
 For Integration: Acceptance means the Product(s) has been successfully integrated into the Customer environment and substantially meets the integration requirements described in the applicable SOW ("Integration"). In the event that during Integration Philips discovers elements or features of the Customer's environment that were not properly identified to Philips or could not have been reasonably known or understood by Philips prior to agreement on the applicable SOW, Philips may, after the exercise of commercially reasonable efforts complete implementation of an applicable Integration requirement, determine in good faith, and provide Customer with written notice, that such Integration requirement cannot, in whole or in part, be implemented. Upon Customer's receipt of such notice, that Integration task shall be considered complete. Any such determination by Philips shall not reduce the price of the Integration or delay payment by Customer. Customer will sign the Philips acceptance form provided by Philips as acknowledgement that the Integration of the Products is complete and accepted by Customer.
- 1.5 "Available for first patient use" as it relates to the DCP Products and notwithstanding anything to the contrary set forth in the Philips Standard Terms and Conditions of Sale, means the Product has been installed and performs in substantial compliance with the Philips documentation provided with the Product and is available for Customer's first clinical use.
- 1.6 "Client Device" means a computer, workstation, terminal, or other electronic device used to access the Product(s).

Any other capitalized term used in this Schedule 1-A shall have the meaning ascribed to it in the main body of the Conditions of Sale.

**2. Payment Terms.**

- 2.1 Unless otherwise specified in the quotation or Statement of Work (where applicable), Philips will invoice Customer and Customer will pay such invoice on receipt for each product as follows:
  - 2.1.1 100% of the purchase Price for Products shall be due thirty (30) days from Philips' invoice date.
  - 2.1.2 100% of any Integration services Price shall be due thirty (30) days from Philips' invoice date.
  - 2.1.3 Payment terms are subject to credit approval.

**3. Customer Room Preparation Responsibilities.**

In addition to the requirements set out in Section 7 of the Philips Standard Terms and Conditions of Sale, Customer is responsible for the following site preparation and installation activities:

- 3.1 Customer is responsible for all activities and costs necessary to prepare the facility for installation of the Product by Philips.

Customer's obligations include, but are not limited to, any connectivity to the Customer's network, which includes the requirement for such connectivity to comply the applicable Philips Product requirements and specifications, running all required cables prior to installation.

- 3.2 Prior to acceptance of the quotation, Customer shall obtain from the applicable Philips implementation team any other additional Customer installation preparation requirements in connection with the implementation resulting from unique attributes of Customer's environment and the size of the implementation.
- 3.3 Product Operating Environment: Customer shall ensure an adequate operating environment for the Product that meets generally accepted industry standards for the operation of computer server equipment, including without limitation stable table, power and air conditioning. The installation site shall be protected from unauthorized access.
- 3.4 In the event that multiple server racks are required to support the use of the Product, Customer shall provide, without charge, contiguous rack space at the installation site.
- 3.5 Minimum Network Requirements. Customer shall provide at a minimum the network requirements, if any, as stated in the SOW and/or the final design documentation, as applicable.
- 3.6 In case any or all of the above conditions are not properly or timely complied with, or Philips or its representative has to interrupt the installation and installation validation testing for reasons not attributable to Philips, the period of completion shall be extended accordingly and any and all additional costs resulting therefrom shall be the Customer's responsibility. PHILIPS NEITHER ASSUMES LIABILITY NOR OFFERS ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF THE PREMISES OR THE UTILITIES AVAILABLE AT THE PREMISES IN WHICH THE PRODUCT IS TO BE INSTALLED, USED OR STORED.
- 3.7 Customer-Provided Equipment. Customer shall procure, maintain and upgrade all hardware and Client Devices. Hardware and Client Devices must meet the minimum requirements set forth in the final design and/or SOW. Notwithstanding the foregoing, no variance from the Client Devices specification is permitted. Minimum requirements for hardware and Client Devices may change during the Term. Upon Customer's request, Philips shall provide updated minimum requirements, if any. Customer is solely responsible for determining whether hardware and Client Device display are of diagnostic quality and for maintaining the displays in accordance with the manufacturer's specifications. Philips is not responsible for providing Client Devices.

#### **4. Archive Requirement.**

- 4.1 To the extent required by the final design, Customer is required to have storage and archival capabilities for any Digital Computational Pathology system provided hereunder. If Customer provides its own storage, Customer is responsible for procuring any specialty software or hardware (fiber channel or host bus adapter ("HBA")) necessary to manage storage and allow the system to access the storage. To the extent required by the final design, Customer is responsible for providing fiber channel switches, port upgrades, and other telecommunications and/or network hardware required for the Philips products to physically connect to the storage, regardless of whether or not Philips provides the storage.

#### **5. Software Installation on Hardware or Infrastructure.**

- 5.1 Philips shall install the Licensed Software solely on the hardware delivered by Philips, per the term of Philips Quotation, or on to Customer's virtual infrastructure, provided that it meets Philips' specifications for virtual infrastructure. Customer shall not use the Licensed Software with any other hardware except as expressly stated herein or in an applicable SOW. If Philips releases a Software Update that requires a different Hardware environment and Customer elects to receive the Software Update, Customer shall provide the Hardware changes before Philips performs the Software Upgrade.

#### **6. Storage Sizing.**

- 6.1 To the extent not otherwise stated in the quotation, an applicable SOW, or the final design documentation, Customer and Philips will agree on data retention requirements, including, estimates of storage sizing and which party will source the storage solution(s). Upon request, Philips will provide Customer with estimates of image study sizes for different types of studies that Customer can use as a general aide to calculate and determine its near-term and long-term storage requirements for the DCP solution. Customer is responsible to determine what storage archive device types and sizes are required to support its DCP solution, whether through procurement from Philips or utilization of Customer's own existing storage solutions. Customer acknowledges that use of storage varies greatly based on its unique utilization of the system and based on factors that are outside Philips' control. Therefore, and notwithstanding any estimates provided to Customer by Philips, Customer is solely responsible to determine what storage device and archiving solution is best suited to meet its needs. As part of its decision-making process in connection with archive device storage size, Customer acknowledges that study sizes are affected greatly by (a) changes in the types and amount of modality equipment used, (b) technician discretion in file size creation, and (c) clinical protocols within a department. Customer is solely responsible for system administration for the DCP solution, which includes monitoring the storage archive device for its utilization levels and planning any necessary storage changes as Customer's requirements change. Once the final design is agreed upon between the parties, if it is determined that additional storage capacity is required beyond what is provided for in the Philips quotation, Customer shall be responsible for any additional cost associated with increasing the system's storage capacity to meet the requirements of the final design.

**7. Unauthorized Patches and Anti-Virus Updates.**

- 7.1 Customer's installation or use of (a) operating system patches, updates or upgrades; (b) anti-virus updates (except to the DAT files i.e., virus definitions); or (c) upgrades to anti-virus search engines without prior validation testing and approval by Philips ("Unauthorized Updates") may adversely affect the functionality and performance of the Licensed Software. If Customer installs or uses Unauthorized Updates, Philips shall have no liability or responsibility for performance of the Licensed Software and the warranty shall be void. If Customer is using Unauthorized Updates when requesting service support or an Unauthorized Update is discovered by Philips after commencing the technical support process, then, prior to being obligated to perform warranty support services during a service period, Philips may require Customer to roll back to the most recent operating system and anti-virus search engine versions that have been validated by Philips as posted on the Philips service internet site.

**8. Interfaces.**

- 8.1 Philips' obligation to provide any Digital Computational Pathology interface is expressly conditioned upon Customer enabling its Information System to send and receive messages to and from the applicable Philips products by the date the products are available for first patient use. 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 against the applicable purchase order. 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.

**9. Frequent Data Backup/Disaster Recovery Responsibility.**

- 9.1 Philips is not responsible for:

- 9.1.1 the development or execution of a business continuity/disaster recovery plan;
- 9.1.2 providing a means for backing up data and images; or
- 9.1.3 backing up the data and images processed by the system. Customer may request Philips' assistance in designing a disaster recovery plan, but Philips accepts no liability whatsoever for the resulting plan or the results of Customer's utilization of such plan. Customer is responsible for providing a storage solution or storage backup device and for performing frequent backups of any data, patient information or images residing on the repository database, on Philips' products, or an archive. Except to the extent that Customer purchases some or all of the storage solution from Philips, as provided for in Section 11 above, Philips does not provide the storage archive or Client Devices to be used with this Product. These are Customer provided and not included in this purchase.

**10. Statement of Work ("SOW").**

- 10.1 If applicable, Philips and Customer will create a mutually agreed upon Statement of Work (a "SOW") to include design processes and documents which the parties will sign prior to Philips' commencement of the applicable project. Unless expressly stated in a separate SOW for Integrations services, the acceptance criteria for Integration services shall be set forth in this SOW. The SOW is subject to any mutually agreed written adjustments to the project price, and the terms set forth in the Philips Standard Terms and Conditions of Sale, including this schedule, and the applicable quotation.

**11. Applications Administration Requirement.**

- 11.1 Customer, at all times, shall have a designated IMS Applications Administrator that has completed the applications training for the version of the product running at Customer's site. The applicable applications training is set forth in the quotation.

**Schedule 1-A**  
**Annex I**  
**DCP SOFTWARE LICENSE TERMS ("Software License Terms")**

In addition to the Licensed Software terms in Philips Standard Terms and Conditions of Sale (which may also be referred to herein as the "Agreement"), the following terms and conditions, apply to Digital Computational Pathology products:

**1. License Grant.**

- 1.1 Software licenses are granted as provided for in the Philips Standard Terms and Conditions of Sale.
- 1.2 Customer acknowledges and agrees that the Product incorporates technology (software, programs, machine codes) owned or certified by Philips' third-party suppliers ("Embedded Software") and that this Embedded Software are either licensed to Customer directly by Philips' suppliers pursuant to third-party license agreements or are subject to certain usage limits beside the ones listed in this Agreement. Customer hereby agrees to be bound by the terms of such third-party license agreements and usage limits. Philips reserves the right to provide additional "notice files" accompanying the Licensed Software as supplied by its third-party suppliers. Such notice files are purely informative.

**2. Modifications.**

- 2.1 If Customer or any of its officers, employees or agents either (i) devise or acquire any improvements in the Licensed Software, or (ii) suggest or recommend to Philips any improvements, then such improvements and such information shall be disclosed in writing and a non-exclusive, world-wide, royalty-free license shall be offered to Philips in writing. In case Philips accepts such offer either in whole or in part by explicit written acceptance, Philips agrees to grant to Customer a non-exclusive, world-wide, royalty-free license to any further improvements Philips makes to any such improvement made by Customer.

**3. Software Updates and Upgrades.**

- 3.1 Philips may create and license versions of the licensed Software containing Software Updates and Upgrades from time to time. Philips will make such Updated and Upgraded versions of the Licensed Software to Customer during the warranty period and during the term of a valid Philips Services Agreement for the related Product. Licensed Software versions containing Updates are identified by a change to the right of the decimal point in the Licensed Software release number and are offered to Customer at no additional charge. Licensed Software versions containing Upgrades are identified by a change to the left of the decimal point in the Licensed Software release number and are offered to Customer at the Philips prices for such Upgraded version and are subject to the terms and conditions of Philips' then applicable Software License terms and conditions.
- 3.2 Philips may make available maintenance of the Licensed Software updates and upgrades to Customer at Philips's published services rates and subject to the terms and conditions of Philips's then applicable software maintenance/customer support agreement.

**4. Operating System Licensed Software Warranty.**

- 4.1 Philips warrants to Customer that the Operating System Licensed Software (the "Licensed Software") will operate in substantial compliance with the Philips manual(s) delivered with the system for a period of twelve (12) months from the date of the system's availability for Customer's first clinical use.
- 4.2 This warranty is made on the condition that during the applicable warranty period: (i) Customer promptly notifies Philips of the nonconformity giving full details of such nonconformity, (ii) such nonconformity is a critical error in the then-current version of the Licensed Software, and (iii) Philips is able to reproduce the nonconformity, then Philips shall at its option, and at its expense, endeavor to correct the nonconformity, either by replacement, work around, or by modification of the Licensed Software. If, after the expenditure of reasonable efforts, Philips is unable to correct the non-compliance, Philips may refund a reasonable portion of the purchase price for the Licensed Software, in which event the refund will be in full satisfaction of all Customer's claims relating to the non-conformance. Philips does not guarantee the effectiveness of the correction efforts and does not represent or warrant that all errors can be corrected. Correction of the Licensed Software shall not extend the original warranty period as set out above at Section 4.1.
- 4.3 NOTWITHSTANDING THE FOREGOING, PHILIPS DOES NOT GUARANTEE THAT THE LICENSED SOFTWARE WILL PERFORM ERROR-FREE OR UNINTERRUPTED. PHILIPS DOES NOT GUARANTEE THAT IT WILL CORRECT ALL PROGRAMMING ERRORS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE WARRANTIES ARE EXCLUSIVE. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.
- 4.4 PHILIPS FURTHER GRANTS NO WARRANTY AS TO DEFECTS THAT APPEAR IN THE LICENSED SOFTWARE DUE TO ONE OR MORE OF THE REASONS SPECIFIED IN SECTION 12 OF THE AGREEMENT.

**Schedule 1-B**  
**MR Subscription Rev 20(T)**

Product Category	Products
Magnetic Resonance	MRI Software License Packages

The following Schedule 1-B shall apply to Magnetic Resonance Software License Packages offered under the MR Subscription.

**1. Definitions.**

- 1.1. Covered System. The Philips MRI scanner on which the subscription licenses will reside. For existing/installed MRI units, the site number is set forth in the service agreement.
- 1.2. Covered Service Description. Included on the Quotation under NNAN399, describes the Subscription and the applicable fees.
- 1.3. Subscription. Philips grants to Subscriber a time-limited, nonexclusive, nontransferable right to use Subscription Service solely for Subscriber's own internal business purposes, subject to these terms.
- 1.4. Software Version. Introduces major release with significant new features and functionality.
- 1.5. Software Update. Provides minor enhancements or improvements to performance, maintainability and serviceability.
- 1.6. Software Fix. Corrects Product Defect.

**2. Subscription Term.**

- 2.1 The Term of this Subscription is defined in the Quotation under NNAN399 ("Term"), and shall continue unless earlier terminated in accordance with this Agreement.
  - 2.1.1 For new MRI system installations, the Subscription will commence upon completion of installation and availability for first patient use.
  - 2.1.2 For existing/installed MRI systems, the Subscription will commence on the first day of the next calendar month.
- 2.2 The Subscription is non-cancelable by Customer and will remain in effect for the Term specified in this Agreement unless terminated in accordance with Section 6.

**3. Scope of Subscription Service.**

- 3.1. Software Applications. Philips will provide the customer access to all Philips MR software applications, made generally commercially available by Philips, for the MR model/ Covered System listed under the service agreement, that have been released as of the date of execution of the contract that does not require additional hardware.
  - 3.1.1. Some software updates and upgrades may require hardware updates or upgrades. Unless included hereunder, Customer is responsible for any such hardware updates or upgrades.
- 3.2. Annual Updates. On an annual basis during the Subscription Term, Philips will update the Covered System with any new and additional applications, made commercially available by Philips for the Covered System model, as well as any new release of software.
- 3.3 MR Clinical Applications Training. If Customer subscribes to On Demand Clinical Support (ODCS), then, within a reasonable time after Philips installs updates to the application software, Philips will provide Customer with four days (28 hours) of virtual clinical application training. If Customer continues to subscribe to ODCS, then Customer will be entitled to four days (28 hours) of virtual clinical application training during each subsequent contract year.
- 3.3. MR Marketing Support. Philips will provide, annually, additional marketing support (for the new applications) in the form of written support that the customer can use to drive additional referrals. This can come in the form of either a MS Word or MS PowerPoint document.

**4. Fees and Payment.**

- 4.1. Refunds and Cancellation. Fees are: (i) nonrefundable; (ii) not decreased during the Subscription Term based on actual User or data storage usage; and (iii) not cancelable for the Subscription Term.
- 4.2. Subscription Fee.
  - 4.2.1 An annual Subscription Fee is due from the Start Date, payable in advance, according to Customer's choice and the Service Description. Choose one:



- ☐ Quarterly Basis
- ☐ Monthly Basis
- ☐ Yearly Basis
- ☐ One-Time Advance Payment

4.2.2 Fees for Subscription Term renewals or Subscriptions added during a Subscription Term will be: (i) at Philips's current standard price, due beginning on the Start Date for the Subscription Term; and (ii) charged for the full calendar month in which Subscriptions are added, and coterminous for the remainder of the Subscription Term.

## 5. **Subscription Service Requirements.**

- 5.1. Customer must purchase Tech Maximizer (Plus) prior to commencement of the MR Subscription as a condition to purchase MR Subscription solution offering.
- 5.2. Customer must purchase a RightFit Service Agreement prior to commencement of the MR Subscription as a condition to purchase MR Subscription solution offering.
- 5.3. In order to receive virtual clinical education, Customer must purchase On Demand Clinical Support.

## 6. **Termination.**

- 6.1. Philips may suspend or terminate Subscription Service with 30 days written notice if Subscriber breaches its obligations including timely payment, or without notice if Philips has a good faith belief that: (i) Subscriber is using Subscription Service for illegal purposes; (ii) the integrity or security of Subscription Service is threatened; (iii) it is necessary to prevent fraud or harm to Philips or Subscriber; (iv) Subscriber has or will breach its confidentiality obligations, infringe Philips' Intellectual Property rights, or assign or transfer its rights or obligations without consent; or (v) it is required by law.
- 6.2. Upon termination (i) Subscriber's right to use Subscription Service ends, (ii) Subscriber will cease using Subscription Service and, at Philips's direction, return or destroy Philips Confidential Information and Documentation, and (iv) Subscriber will immediately pay Philips all Fees due including Fees for the balance of the Subscription Term if Subscription Service is terminated prior to the end of the current Subscription Term.
- 6.3. If Subscriber added this Subscription to a previously installed and operational MRI system, then at the time of termination, all licenses will revert to the version that was in place prior to commencement of the subscription.
- 6.4. This Agreement will terminate automatically upon termination or expiration of all Subscription Terms.

## 7. **Installation.**

- 7.1 Philips will install the product during normal working hours, 8:00 AM – 5:00 PM, in the time zone where the Customer is located.

## 8. **Post Go-Live Support.**

Subscription Service includes telephone and remote support according to the terms of this Schedule.

- 8.1. Philips' standard support generally includes: (1) commercially reasonable efforts to resolve problems which cause Application functionality not to perform substantially as described in the Documentation; (2) remote assistance and troubleshooting advice for trained Subscriber personnel to determine cause and address technical problems with Subscription Service; (3) information and status updates for known Application functionality technical issues; and (4) periodic "as available" updates or upgrades to Subscription Service. Support may address but not resolve minor or partial loss of functionality, intermittent problems or minor degradation of operations.
- 8.2. Philips will use commercially reasonable efforts to respond to support requests as soon as possible and may not respond in the same day a request is received. Subscription Service and support may be unavailable due to scheduled downtime, maintenance, or circumstances beyond Philips' reasonable control. Philips may schedule downtime at any time without notice if Philips reasonably determines that not acting immediately could be harmful to Philips or Subscriber.
- 8.3. Philips is not responsible or liable for support or Subscription Service interruption or problems due to: (1) Subscriber systems, information, content, software, scripts, data, files, application programming, web servers or service, materials, equipment, acts or omissions of Subscriber or its agents; (2) virus or hacker attacks; (3) circumstances beyond Philips' reasonable control; (4) intentional shutdown for emergency intervention or security incidents; (5) Subscriber configuration changes; (6) Subscriber's failure to comply with Philips' security and upgrade policies; (7) Internet or other connectivity between Subscriber's network and Subscription Service or Philips' network, or any other network unavailability outside of the Philips network; or (8) training questions or Subscriber's use of Subscription Service; (9) acts or omissions of a party other than Philips.

## 9. **Software Versions and Updates.**

9.1. If a new software version or update is made generally available by Philips for the Covered System, and the requirements of the Agreement are satisfied, then Philips will upgrade the Covered System application software during the term of the Agreement as follows:

9.1.1. Philips will provide new software versions and updates of software for existing applications made generally commercially available within a reasonable period after their release.

9.1.2. Functionality. Customer is entitled to additional functionality previously purchased or bundled with the software, if available, in the version or update released on or after the start date of the Agreement. Customer acknowledges that certain functionality in current and previous software versions may not be available in future new software versions.

9.2. To receive a new software version:

9.2.1. Customer must be in compliance with all terms and conditions of this schedule and the Agreement, including access to the Covered System by Philips personnel and payment ;

9.2.2. 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 Schedule; and

9.2.3. The Covered System that will receive the version or update must meet the specifications of the new software version. Customer shall purchase or provide the Covered System hardware or software necessary to meet such specifications.

9.3. Unless specifically included elsewhere in this Agreement, software versions and updates do not include implementation services, virus protection software, security patches, custom interface software, operating system software, or software updates of third party software (e.g. Citrix) or hardware required to use the update or upgrade, unless otherwise covered under a Tech Maximizer service offering purchased for the Covered System. Philips shall have no responsibility to provide software versions or updates for minor software defects that do not impact the intended use of the software or impact patient care.

9.4. Customer may not resell, transfer, or assign the right to such versions, updates, or fixes to any third party. All versions and updates provided to the Covered System under this Schedule are subject to the terms and conditions of this Schedule, the Agreement, and any license terms and conditions included in the purchase of the product from Philips or later provided to Customer.

## **10. Telephone And Remote Support.**

10.1. Telephone Support. Telephone and Remote Support coverage is included with MR Subscription. Technical and Clinical Telephone and Remote Support coverage services are available twenty-four hours per day, seven days per week including Philips recognized holidays.

10.2. Remote Access & Diagnostics. Philips may remotely access the Covered System to perform Services. Customer shall provide Philips remote access to the Covered System. Philips shall not be responsible for delays arising from customer's network or IT infrastructure that does not allow for remote dial into the Covered System

10.3. On-Site Software Resolution Response. Philips primary method for software services is telephone and Philips Remote Services ("PRS"). 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 a.m. to 5:00 p.m. local time, excluding Philips recognized holidays, and includes labor and travel necessary for the delivery of corrective services.

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

## **11. Customer Success Management Services.**

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

11.1.1. 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 Covered System service issues resolved during the previous period, and review any open or unresolved issues.

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

11.1.3. 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.

## **12. Clinical Implementation Services.**

12.1. If included in the quotation Philips will provide on-site implementation services for new versions or updates that Customer

Confidential

Standard Terms and Conditions of Sale

Revision 20 (T) (October 2022)

Page 16 of 50

is entitled to receive under this Agreement, at a time mutually agreed to by Philips and the Customer. Scope, duration and delivery methodology of the clinical support of installation and clinical education will vary by new version, update or fix and will be defined by Philips at Philips sole discretion.

- 12.2. Go-Live Support. Philips will provide clinical go-live support during the implementation for new version upgrades and updates. Go-live support will be scheduled between 7:00 a.m. – 7:00 p.m. Monday through Friday, relative to the new software version and will be virtual or on-site at Philips' discretion. Customer may request additional go-live support, or go-live support outside of standard hours, at an additional cost.
- 12.3. Clinical Education. Clinical services will be scheduled between 7:00 a.m. – 7:00 p.m. Monday through Friday, relative to the new software version. Customer may request additional clinical education or clinical education outside of standard hours, at an additional cost.
  - 12.3.1. Clinical Education class size is limited to ten (10) participants;
  - 12.3.2. If applicable, Customer will provide a suitable location for on-site classroom education; and
  - 12.3.3. Customer will provide full and free access and use of the Covered System for training.
- 12.4. Scheduling. Customer must schedule all Clinical Implementation Services, except Online Education, at least eight (8) weeks prior to the desired date for Philips to deliver the applicable service. If Customer representative does not schedule the Clinical Implementations Services with Philips in accordance with this Schedule, then Philips shall not be obligated to perform such Clinical Services.
- 12.5. Travel Expenses. Unless otherwise stated in the quotation, Philips' travel expenses for all Clinical Implementation Services delivered at the Customer site are included in the price described in the Agreement.
- 12.6. Philips will provide the clinical education and product applications training ("Training") that customer has selected from the Philips' course catalog(s) ("Course Catalog(s)").
- 12.7. Clinical Education training and credits will expire upon termination or expiration of the Agreement.
- 12.8. Training does not include (a) maintenance or diagnostic related technical training or (b) clinical applications training on hardware or software not installed or provided by Philips.
- 12.9. Trainee(s) must meet the minimum admission requirements set forth in the course syllabus, must satisfy all prerequisites prior to admission, and may be required to sign or acknowledge Philips safety checklist prior to receiving Training.
- 12.10. Training may be conducted at Philips' training facilities, the Customer location(s) described in this Agreement ("Customer Site(s)"), through on-line or remote training, or at a third-party location determined by Philips.
- 12.11. Direct Course Purchase. Customer may purchase individual courses at then current prices.
- 12.12. PHILIPS MAKES NO WARRANTY THAT ANY TRAINEE WILL PASS ALL OR ANY PORTION OF THE TRAINING COURSES PROVIDED OR THAT THE TRAINING WILL RESULT IN ANY TRAINEE BEING QUALIFIED OR ABLE TO OPERATE THE SYSTEM.

### **13. Customer Responsibilities.**

- 13.1. System Administrator. The Customer shall designate an individual(s) to serve as Customer system administrator ("System Administrator") and an alternate, who will serve as Philips' primary support contacts. These individuals should be familiar with all aspects of training provided by Philips, including end-user and system administrator training. In addition, the System Administrator shall maintain the integrity of the Covered System operation and ensure that proper backup procedures are in place as outlined in the System Installation and Reference Guides.
- 13.2. Remote Access. Customer must provide necessary uninterrupted remote access, required information, and support for the Covered System to connect to Philips Remote Service ("PRS"). PRS is the basis for Services delivered under this Schedule. Customer waives all rights to services and service deliverables under this agreement unless PRS connectivity is enabled and maintained.
- 13.3. Security. The Customer is solely responsible for providing adequate security to prevent unauthorized Covered System access to Philips (or its third party vendors) proprietary and confidential information.
- 13.4. Hardware Revision Levels. The Customer must maintain all associated Covered System hardware, firmware, and middleware at the required revision levels for the software version. To receive software versions and updates, the Customer must maintain all associated hardware to the then-current specification for the software versions and updates.
- 13.5. Data Reconstruction. The Customer shall follow the recommended daily back-up processes as outlined in the Covered System Installation or Reference Guide. Additionally, the Customer is responsible for the reconstruction, restoration, retrieval, or recovery of any lost or altered patient records, files, programs, or data. Philips is not responsible for the reconstruction, restoration, retrieval, or recovery of any lost or altered files, data, or programs.
- 13.6. Intermediate Resolutions. Customer shall implement any intermediate resolutions or workarounds as requested by Philips

while Philips seeks a long-term resolution.

- 13.7. Customer shall be solely responsible to perform daily data back-ups for the Covered System and for cybersecurity protection, including malware and anti-virus for the Covered System. This is not included in Philips MR subscription service. Customer shall install and configure anti-virus software pursuant to the Installation manual for the Covered System or risk defects in the Covered Systems function such as performance degradation and slow down. If the defects arise from failure to follow such installation manual, such defects are not covered by this agreement and Philips may require Customer to reconfigure the anti-virus to the recommended settings.

#### **14. Service Limitations.**

- 14.1. Software Restoration. If the software fails and the supported application software requires restoration, then Philips will reinstall the application software, database software, and operating system to the revision level that existed prior to the malfunction or failure and Philips will attempt to reinstall the Customer-created data backup. If the Customer-created data backup cannot be used to re-install any data to the Covered System, the Customer will hold sole responsibility for the loss of data. Custom or third party software, custom database configurations or reports, and Customer-written product interfaces are not included. If a Covered System failure is attributed to hardware not supported under the Agreement, the Customer shall restore the software, operating system, and database software before Philips begins any software restoration efforts.
- 14.2. Non-Philips Software Assistance. Requests for assistance with hardware, operating systems, communications network, Third party software, printer configuration, etc., are outside the scope of this Agreement.

#### **15. Exclusions.**

- 15.1. In addition to the any exclusions set forth in the Schedule, the following Exclusions apply to MR Subscription.
- 15.2. Any combining of the Covered System with a non-qualified device. A non-qualified device is:
- 15.2.1. Any product (hardware, firmware, software, or cabling) not supplied by Philips, whether used internal or external to Covered System without Philips' approval. Examples include, software patches, security fixes, and service packs from the operating system, web browser, or database software manufacturer(s);
  - 15.2.2. Any product supplied by Philips that has been modified by the Customer or any third party; and
  - 15.2.3. Any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements;
  - 15.2.4. Any product that has reached its "End of Life". "End of Life" means software and or hardware equipment that has surpassed the published end of support life date by the original equipment manufacturer.
- 15.3. Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the Covered System.
- 15.4. If the Covered System covered by this Schedule is software only, then notwithstanding anything to the contrary in the Agreement or this Schedule, network, hardware and parts are not included in the Services.
- 15.5. Viruses arising from a Customer network, customer client devices such as phones, tablets, laptops and desktops, and/or third party medical devices used by Customer.
- 15.6. Damage caused by fires (including watering systems), floods, and/or use of the Covered System in an environment not meeting the requirements recommended by Philips causing corrosion to the Covered System or other defects to the MR subscription software.

**Schedule 2**  
**Ultrasound Systems Portfolio (UL) Rev 20(T)**

Product Category	Products
Ultrasound Systems (UL)	Cardiovascular Ultrasound (CV UL) General Imaging Ultrasound Systems (GI UL) Women's Health Care (WHC UL) Point of Care (POC UL)

**1. Payment Terms.**

- 1.1 Unless otherwise specified in the quotation, Philips will invoice Customer and Customer will pay such invoice on receipt for each Product as follows:
  - 1.1.1 100% of the purchase price shall be due thirty (30) days from Philips' invoice date.
- 1.2 Support Services, if any, shall be invoiced and paid as set forth on the quotation.
- 1.3 Payment terms are subject to credit approval.

**2. Additional Terms Related to sales of Ultrasound Products.**

- 2.1 The ultrasound system's memory (hard drive, solid state memory, etc.) should not be used as a data repository or central archive to store images and reports. This has led to Customer's losing data in the past. In no event shall Philips be liable for loss of data on an ultrasound equipment. It is the responsibility of Customer to make daily back-up copies of data residing on this equipment. This can be performed by sending images and reports generated by the use of the ultrasound equipment to a Picture Archive and Communication System (PACS) or via another medium that is automated for back-up retrieval. Costs associated with data restoration from a backing-up images and reports to a non-automated source is Customer's entire responsibility and at Customer's sole risk. Data retrieval and restoration from these methods may be time consuming and a non-automated system process may result in further data loss by itself and is not recommended by Philips.

**3. Prior Validation of Operating System (OS) Updates and/or Upgrades.**

- 3.1 Patches introduced by operating system Original Equipment Manufacturers (OEM) or upgrades to anti-virus software can impact the performance and functionality of the applications that run on them and affect patientsafety. Philips shall perform validation testing of certain Microsoft operating systems and McAfee anti-virus software during the warranty period. Philips shall have no obligation to validate any other third-party operating system or anti-virus software. Customer shall not install or use:
  - 3.1.1 operating system patches, updates or upgrades;
  - 3.1.2 anti-virus updates (except to the DAT files, i.e., virus definitions); or,
  - 3.1.3 upgrades to anti-virus search engines, collectively (a) and (b) prior to validation testing and approval by Philips ("Unauthorized Updates").
- 3.2 Philips shall have no liability, including, without limitation, for warranty claims, arising from use of the Licensed Software with Unauthorized Updates. In the event Philips discovers that Customer is using an Unauthorized Update with the Licensed Software, Philips shall have the right to require Customer to roll back to the most recently validated versions of operating systems and anti-virus, prior to performing any support.

**4. Lumify.**

- 4.1 If Customer's purchase includes a Lumify Ultrasound Solution or Bundle, then the following terms apply in addition to the Philips Standard Terms and Conditions of Sale:
  - 4.1.1 Compatible Smart Devices.
    - 4.1.1.1 Use of the Lumify Ultrasound Solution or Bundle for Android requires the following components: A Philips Lumify transducer and cable, a compatible smart device, and the Lumify Software Application (SW App). The compatible smart device is an off-the-shelf consumer tablet or phone meeting Lumify compatibility specification. Philips may change the published compatible device list from time-to-time.
    - 4.1.1.2 Use of the Lumify Ultrasound Solution or Bundle for iOS requires the following components: A Philips Lumify transducer, the Lumify Software Application (SW App), and the Lumify Power Module (LPM), Rigid Connector (to be used with Philips provided custom Thule case), flexible cable, mounting plate (to be used without the Philips provided custom Thule case), and a charging cable.

- 4.1.1.3 Philips does not provide any maintenance or repair services for Customer's smart devices. Philips does not provide anti-virus software for Customer's smart device; Customer is responsible for purchasing anti-virus software or apps and for managing all virus issues in connection with Customer's smart devices. The Lumify Ultrasound Solution does not include any security software for Customer's smart devices. Customer is responsible for managing and maintaining firewalls or other appropriate security and privacy measures for data residing on Customer's smart devices.
- 4.1.2 If Customer selected the Lumify: Outright Purchase, the following terms apply:
  - 4.1.2.1 Customer will purchase at their own expense a smart device from the approved list published on the Lumify website, and Customer will install the Lumify SW App from the commercial play store on the smart device.
  - 4.1.2.2 Customer acknowledges that the purchase of a Lumify Ultrasound Solution does not include the required smart device.
- 4.1.3 If Customer selected the Lumify System Bundle option, Customer's shipment will include a compatible Android device with the Lumify app pre-installed and the following terms apply:
  - 4.1.3.1 Customer authorizes Philips to accept on their behalf the applicable end user license agreement, which can be found at:
    - 4.1.3.2 for Samsung devices: [http://www.samsung.com/us/common/software\\_eula.html](http://www.samsung.com/us/common/software_eula.html), and for other devices: a link will be provided upon request.
  - 4.1.3.3 Customer authorizes Philips to perform basic setup steps and install Lumify SW on the tablet.
  - 4.1.3.4 Customer agrees to the limited replacement-only warranty coverage for the smart device as identified in the warranty agreement.
  - 4.1.3.5 After the warranty period for the tablet, Philips shall not be responsible for the performance or functionality of the Lumify application following any customer installation of OEM operating system patches, updates or upgrades to the tablet.
- 4.2 License to Lumify SW App. The license granted to use the Lumify SW App is limited to use with the Lumify transducer on one or more computers or smart devices that are listed on the approved hardware list published on the Lumify website. The Lumify SW App is available via the Google Play Store and the Apple App Store. When downloaded, the Lumify SW App is in demonstration mode, but it will be fully enabled if Customer purchases and registers the transducer with Philips.
- 4.3 Internet connectivity is not required to use the Lumify Ultrasound Solution but is required to download the Lumify SW App and to register each unique configuration including the smart device, OS updates to the smart device, Lumify App SW versions, and Lumify transducer).
- 4.4 As part of the Lumify Ultrasound Solution, Philips periodically collects system log information; Customer agrees to such collection when Customer purchases a Lumify Ultrasound Solution. See the Privacy Notice for more details.

## 5. **Xtend Coverage.**

- 5.1 Services Provided. If applicable, the Xtend Coverage (the "Coverage") on the systems listed in the quotation (the "Covered Systems") are offered by Philips North America LLC ("Philips") under the Xtend Coverage terms and conditions described below or otherwise confirmed by Philips in writing.
  - 5.1.1 Repair Service. Commencing on the effective date and subject to the repair limitation below, Philips or Philips' subcontractors will provide repair services for Covered Systems for material defects. Philips will provide all replacement parts, which may be refurbished, and labor necessary to repair Covered Systems. All components used are subject to Philips' inspection and quality control procedures and shall be warranted to the same extent that a non-refurbished component is warranted. Parts removed for replacement become the property of Philips and Philips shall remove parts from Customer's Site. Philips may increase its contract prices if a Covered System is upgraded or reconfigured.
  - 5.1.2 Planned Maintenance Service. Philips will provide Customer a planned maintenance schedule for each Covered System. Philips will provide such planned maintenance during the Service Coverage hours (as defined in the Quotation) at a time that is mutually agreed upon. Customer will make Covered
  - 5.1.3 Systems available in accordance with this schedule. Philips or its subcontractors will provide planned maintenance on each Covered System at scheduled intervals. If Philips cannot locate a Covered System, or a Covered System was not made available for planned maintenance when scheduled, Philips will notify the Customer that Customer has ninety (90) days to make available such Covered System for planned maintenance, otherwise customer waives right to service, and Philips may delete such Covered System from the list of Covered Systems in the Quotation.
  - 5.1.4 Software Updates. Philips will install operating system software updates provided by the Original Equipment Manufacturer (OEM) for Covered Systems. Software updates mean revisions to OEM proprietary operating system



software that enhance existing system functions and operation without hardware changes but will not install operating system software upgrades to new software platforms or software options offered separately for sale by the OEM.

## 5.2 Exclusions. Unless specifically included in the Quotation, the Coverage does not include:

- 5.2.1 servicing a Covered System if contaminated with blood or other potentially infectious substances;
- 5.2.2 any service necessary due to: a design, specification or instruction provided by Customer or Customer representative;
- 5.2.3 the failure of anyone to comply with Philips' written instructions or recommendations;
- 5.2.4 any combining of a Covered System with other manufacturers product or software other than those recommended by Philips, except for products delivered by Philips and sold under the applicable Quotation;
- 5.2.5 any alteration or improper storage, handling, use or maintenance of a Covered System by anyone other than Philips' subcontractor or Philips;
- 5.2.6 damage caused by an external source, regardless of nature, unless caused by Philips or Philips' subcontractor;
- 5.2.7 any removal or relocation of a Covered System; or
- 5.2.8 neglect or misuse of a Covered System;
- 5.2.9 any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors;
- 5.2.10 any rigging or structural alteration incident to the Services;
- 5.2.11 consumable items and supplies (such as biomedical laser tubes and patient used pads), cryogens, Positron Emission Tomography (PET) calibration sources, film, batteries, cassettes;
- 5.2.12 cosmetic repairs;
- 5.2.13 the cost of factory reconditioning, rebuilds, or overhauls if repairs cannot maintain a Covered System in satisfactory operating condition;
- 5.2.14 disposing hazardous, infectious, or biomedical waste or materials;
- 5.2.15 providing service to any Covered System under a current service agreement between Customer and another vendor until such agreements expire or are terminated by Customer. Philips is not liable for any cancellation penalty or cost associated with Customer's termination of any such agreement.
- 5.2.16 unless otherwise specified in the Quotation, maintaining or repairing Philips and/or third-party products including but not limited to nuclear camera detector crystals, Computed Tomography (CT) Tubes and radiation therapy tubes, x-ray tubes, flat panel detectors, image intensifiers magnet replacement, magnet refrigeration system (coldhead, compressor, chillers), Magnetic Resonance (MR) radio frequency (RF) rooms, surface coils HVAC systems, power conditioners, uninterruptible power supplies, ultrasound transducers (probes) (accessory or attach), TEE probes, TV camera pick-up tubes, photo multiplier tubes, accelerator center beam lines, piped medical gases (up to the wall outlets), copier drums, electron guns, fiber optic bundles, foot/hand controls (switches, accessory, or attachment), klystrons and thyratrons, magnetrons, plumbicons, waveguides, and attachments; and,
- 5.2.17 unless otherwise specified in the Quotation: arthroscopy instruments, blood pressure cuffs (accessory or attachment), centrifuge motor brushes, electronic thermometer probes, electrosurgical instruments (pencils & pads), general or surgical instruments, laboratory glass, laser tubes, phaco hand pieces (cataract extraction units, accessory or attachment), non-electrical surgical equipment, rigid & semi- rigid scopes.

## 5.3 Customer Responsibilities. During the term of the Coverage, Customer will:

- 5.3.1 ensure that the Site is maintained in a clean and sanitary condition; and that each Covered System, product or part is decontaminated prior to service, shipping or trade-in as per the Instructions in the User manual;
- 5.3.2 dispose of hazardous or biological waste generated;
- 5.3.3 maintain operating environment within Philips' specifications for the Site (including temperature and humidity control, incoming power quality, incoming water quality, and fire protection system);
- 5.3.4 use Covered Systems in accordance with the published manufacturer's operating instructions;
- 5.3.5 if applicable, attend a start-up meeting at Customer's facility, prior to the effective date of the Coverage, so Philips can explain the Coverage to the Customer's management and selected staff;
- 5.3.6 provide a secure dedicated space within Customer's main facility and at each additional facility or location as

- necessary for the resident Philips staff;
- 5.3.7 provide Philips with broadband internet or Wi-Fi access for business purposes;
- 5.3.8 for any non-Philips system, provide Philips with the Covered System's service manuals;
- 5.3.9 maintain all software licenses applicable to each Covered System;
- 5.3.10 for Philips use in remote servicing of Covered Systems, provide Philips a secure location for hardware to connect Covered Systems to Philips Remote Service Network ("RSN");
- 5.3.11 the RSN hardware remains Philips' property and is only provided during the term of the Coverage;
- 5.3.12 provide Philips and its vendors full and free access to the RSN hardware to enable Philips to remotely access the
- 5.3.13 Covered System or non-Philips System;
- 5.3.14 provide Philips at each Site, at all times during the term of the Coverage, a dedicated broadband Internet access node, including public and private interface access, suitable to establish a successful connection to the Covered Systems at the Site through the RSN and Customer network; and,
- 5.3.15 if the Covered System cannot be connected to the RSN and Customer fails to provide Philips with reasonably requested access, then Customer waives its rights to Coverage on such Covered System and any uptime guarantee.
- 5.4 System Availability. If Customer schedules service and a 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 a Covered System.
- 5.5 Coverage. To the extent a repair issue cannot be remedied remotely, Philips will provide services on-site during the hours listed in the quotation, excluding Philips observed holidays, unless otherwise set forth in attachments or exhibits ("Service Coverage"). Customer may request service outside of the Service Coverage or service that is not otherwise included in this Agreement and, subject to the availability of personnel and repair parts, Philips will provide such service at Philips's then-current preferred rates and for material and labor. Customer will be charged a minimum of three hours on-site time plus applicable travel charges and expenses per service visit.
- 5.6 Documentation. Upon Customer's written request, Philips will provide repair and planned maintenance records for each Covered System.
- 5.7 Term and Termination. The term of this Agreement shall be set forth in the Quotation and incorporated herein.
- 5.8 This Agreement is non-cancelable and will remain in effect for the term specified in the Quotation.
- 5.9 Warranty Disclaimer. Philips' full contractual Coverage obligations to Customer are described in this Schedule. Philips provides no additional warranties under this Agreement. All service and parts to support the Coverage under this Schedule are provided AS IS. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY PHILIPS' SUBCONTRACTOR OR PHILIPS.
- 5.10 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.
- 5.11 Subcontracts. Philips may subcontract to service contractors of Philips' choice any of Philips' Coverage obligations to Customer or other activities performed by Philips under this Quotation. No such subcontract will release Philips from those obligations to Customer.
- 5.12 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.
- 5.13 Solicitation of Philips Employees. For the duration of the Coverage and for one year following the expiration or termination of the Coverage, Customer and its affiliates will not directly or indirectly solicit any employee of Philips or its affiliates engaged in providing the services.
- 5.14 Philips Maximizer (Technology Upgrades PTU). If Maximizer is purchased under this Agreement, then Philips will upgrade the Covered System's software as follows:
  - 5.14.1 Philips will provide the latest available system software upgrades, if any, when available and approved by Philips, to the Covered System operating system software, basic application software, and software options purchased with the Covered System.
  - 5.14.2 Upgrades do not include functionality, applications, options or the like that were not purchased with the System, including but not limited to virus protection software. Customer may not resell, transfer, or assign the right to such Upgrades to any third party. In addition to these terms and conditions, all upgrades to a Covered System's software

provided under this Section are subject to the licensing terms and conditions included in the purchase of the Covered System from Philips.

## **6. Philips Maximizer Package**

6.1 Philips Maximizer. If Maximizer is purchased under this Agreement, then Philips will upgrade the Covered System's software as follows or as otherwise specified by Philips in writing:

6.1.1 Philips will provide the latest available system software upgrades, if any, when available and approved by Philips, not to exceed one (1) per calendar year, scheduled and delivered within twelve (12) months of the annual eligible upgrade release date, to the Covered System operating system software, basic application software, and software options purchased with the Covered System.

6.1.2 Upgrades do not include functionality, applications, options or the like that were not purchased with the System, including but not limited to virus protection software. Customer may not resell, transfer, or assign the right to such Upgrades to any third party. In addition to these terms and conditions, all Upgrades to a Covered System's software provided under this Section 9 are subject to the licensing terms and conditions included in the purchase of the Covered System from Philips.

6.2 Clinical Education Training.

6.2.1 Training Coverage. Philips will provide the clinical education and product applications training ("Training") that customer has selected from the Philips' course catalog(s) (Course Catalog(s)).

6.2.2 Exclusions. Training does not include (a) maintenance or diagnostic related technical training or (b) clinical applications training on hardware or software not installed or provided by Philips.

6.2.3 Scheduling. Training must be scheduled at least eight (8) weeks in advance except for on-line training. Changes to scheduled Training must be received in writing by Philips at least two (2) weeks prior to scheduled delivery.

6.2.4 Attendance. Philips will train the number of Customer employees (Trainee(s)) for the course specified in the quotation, when space is available. Trainee(s) must meet the minimum admission requirements set forth in the course syllabus, must satisfy all prerequisites prior to admission, and may be required to sign or acknowledge Philips safety checklist prior to receiving Training.

6.2.5 Course Location. Training may be conducted at Philips' training facilities, the Customer location(s) described in this Agreement (Customer Site(s)), through on-line or remote training, or at a third-party location determined by Philips.

6.2.6 Payment Options.

6.2.6.1 Flexible Spending Accounts. If Customer purchased Flexible Spending Account option, the initial account balance is specified in the quotation. The account balance is reduced by the list price for the specified course per attendee. When the balance is depleted, Customer may add funds to their account. If the account balance is negative, then Customer shall promptly pay Philips the balance due. Account balances will not carry over from year to year. Any remaining account balance at the end of the year will not be refunded.

6.2.6.2 Direct Course Purchase. Customer may purchase individual courses at then current prices.

6.2.7 Travel. Philips' travel expenses for all Training delivered at the Customer Site are included in the price described in the applicable Course Catalog(s). Unless otherwise indicated in the Course Catalog(s), all travel and living expenses incurred by the Trainee(s) are the Customer's responsibility.

6.2.8 Warranty Disclaimer. PHILIPS MAKES NO WARRANTY THAT ANY TRAINEE WILL PASS ALL OR ANY PORTION OF THE TRAINING COURSES PROVIDED OR THAT THE TRAINING WILL RESULT IN ANY TRAINEE BEING QUALIFIED OR ABLE TO OPERATE THE SYSTEM.

**Schedule 2-A**  
**Collaboration Live or Reacts Rev 20(T)**

Product Category	Products
Ultrasound	Collaboration Live and/or Reacts

The following Schedule 2-A shall apply to Collaboration Live and/or Reacts offered in connection with the purchase of an Ultrasound System. If your purchase includes a license to Collaboration Live or the Reacts Platform (the "Software Services"), then the following terms apply in addition to the Philips Standard Terms and Conditions of Sale:

**1. Definitions.**

- 1.1 "Account" means a Reacts User Account. A Reacts User Account includes the Account Information.
- 1.2 "Account Information" means the personal information related to a specific User, the User Content, the Account settings, as well as the Usage Information residing on the Reacts Platform.
- 1.3 "Administrator" means a Philips support agent (the "Philips Administrator") or a Customer Account holder (the "Customer Administrator") that has been granted certain administrative permission(s), such as but not limited to the management of: (i) Accounts, and (ii) Subscriptions.
- 1.4 "Subscription" means an access purchased by the Customer to the Software Services.
- 1.5 "Usage Information" means the information associated with the Software Services.
- 1.6 "User" means an individual accessing any of the Software Services.
- 1.7 "User Content" means any data provided by the User or shared with the User contained in the User's Reacts Library or secure messaging including text, photos, videos, graphics, items, or other materials, all of which will be subject, as applicable, to the Philips Privacy Notice.

**2. Customer Responsibilities.**

- 2.1 Customer is responsible for its own and each of its User's acts and omissions, including compliance with the end-User License Agreement ("EULA") currently available online at <https://reacts.com/legal/terms>, use of the Software Services, and ensuring adequate security to prevent unauthorized access to Accounts, User Content, and any confidential information including protecting any client devices such as tablets and laptops with anti-virus and appropriate cyber security.
- 2.2 Customer will obtain and retain all necessary consents, including from patients, before using or granting access to the Software Services for medical purposes, and processing personal information for the purposes of providing the Software Services.
- 2.3 Customer will ensure that the Users use the Software Services in accordance with all applicable laws and comply with all requirements related to the use of personal health information, including medical data. Customer will ensure that the Software Services are not used by patients.
- 2.4 Customer will obtain the consent of its Users to grant Philips access to the Usage Information.
- 2.5 Customer will obtain and maintain all required authorizations, permit(s) and/or register with their local agencies, as necessary, to use the Software Services.
- 2.6 Customer will follow the Collaboration Live Pre-Implementation IT Checklist, which Philips will provide to the Customer.

**3. Access to the Software Services.**

- 3.1 Customer acknowledges that before using the Software Services, each of its User must agree to the EULA. Philips makes such terms available to be agreed upon by each User through a click-wrap process enabled at the time such User creates their account information.
- 3.2 Customer acknowledges that the Software Services are administered by Philips or its affiliate(s) in Canada and that Personal Data may be processed by Philips and/or its affiliate(s) in Canada. Customer is responsible for its own, and its Users, compliance with any local laws, including those laws that permit the processing of Personal Data in Canada.
- 3.3 Customer acknowledges that Philips does not need any medical data to operate any of its Software Services.
- 3.4 Customer will designate individual(s) to serve as Customer Administrator(s) and alternate(s), who will serve as Philips' primary support contacts. The Customer Administrator(s) shall manage all Accounts. Philips Administrator(s) can act on behalf of the Customer to administrate the Services.

- 3.5 Software Services may be interrupted for maintenance, upgrades, or as a result of telecommunication failures or other reasons that are beyond Philips' control. Accordingly, Philips does not warrant the Software Services to be uninterrupted or error-free and will have no liability for any disruptions or downtime. Therefore, the patient care provider performing the ultrasound procedure must be sufficiently qualified independent of the Software Services to perform an ordered patient procedure.
- 3.6 Philips may modify the Software Services, or any portion thereof. You agree that Philips shall not be liable to you or anyone else if Philips does so.
- 3.7 Abusive or excessive usage of the Software Services may result in the temporary or permanent suspension of your and/or any User's access to the Software Services and/or termination of applicable Subscriptions. Philips, in its reasonable discretion, will determine what constitutes abusive or excessive usage of its Software Services.
- 3.8 The access to the Software Services starts when the Subscriptions are created, not when they are assigned.
- 3.9 The ability to access the Software Services may require payment of third-party fees, such as telephone toll charges, mobile carrier fees, ISP, data plan, etc. Philips and its Affiliates have no connection to or responsibility for such fees.

#### **4. Further use of System Data.**

- 4.1 Customer agrees that Philips may use aggregated data to analyze the performance of its Services. Only when strictly necessary, Philips may use the following Personal Data, IP address and User ID, to ensure that the Services are functioning as intended, are maintained to ensure the appropriate security controls are in place and to meet Philips' regulatory and legal obligations.

#### **5. Retention of the Account Information and User Content.**

- 5.1 Philips will retain and grant the Customer or other persons access to Account Information and User Content only to fulfil its obligations under this Agreement or as required or permitted by applicable laws. Once deleted by Philips, the Customer, or the Users, Account Information and User Content cannot be restored.

**Schedule 3**  
**Cardiac Informatics Portfolio (CAI) Rev 20(T)**

Product Category	Products
Cardiology Informatics (CAI)	Image & Information Management System (Xcelera, CardiologyEnterprise Viewer)
	Hemodynamics (Xper IM, Xper Flex Cardio)
	IntelliSpace Cardiovascular (ISCV)
	EKG Information Management (TraceMasterVue, IntelliSpace ECG)
	IntelliBridge Enterprise Licensed Software (IBE)

**1. Definitions.**

1.1 Any capitalized term used in this Schedule shall have the meaning ascribed to it in the main body of the Terms and Conditions of Sale.

**2. Payment Terms.**

2.1 Unless otherwise specified in the quotation, Philips will invoice Customer and Customer will pay such invoice on receipt based on the invoice date for each Product as follows:

2.1.1 0% of the purchase price shall be due with Customer's acceptance of the quotation.

2.1.2 80% of the purchase price shall be due on delivery of the major components of the Product. Product installation will not begin until Customer has paid this portion of the purchase price.

2.1.3 20% of the purchase price shall be due net thirty (30) days from the date the Product is available for first patient use. Available for first patient use means the Product has been installed and substantially meets Philips' systems verification functionality set forth in the installation manual.

**3. Installation.**

3.1 In addition to the obligations set forth in Section 7 Site Preparation and Installation, Customer installation must begin within eight (8) weeks of receipt of delivered Product and completed within six (6) months or as set forth in the statement of work (SOW), whichever is longer.

**4. Customer Room Preparation Responsibilities.**

4.1 In addition to the requirements set out in section 7 of the Philips Terms and Conditions of Sale Customer is responsible for the following site preparation and installation activities:

4.1.1 Customer is responsible for all activities and costs necessary to prepare the facility for installation of the product by Philips. Customer's obligations include, but are not limited to, running all cable in procedure room and network cable to workstations prior to installation.

4.1.2 Prior to acceptance of the quotation, Customer shall obtain from the applicable Philips implementation team any other additional Customer installation preparation requirements in connection with the implementation resulting from unique attributes of Customer's environment and the size of the implementation.

**5. Archive Requirement.**

5.1 Customer is required to have an archive for any Xcelera, Cardiology Enterprise Viewer, IntelliSpace Cardiovascular (ISCV), or IntelliBridge Enterprise Licensed Software (IBE) system provided hereunder. If Customer provides its own storage, Customer is responsible for procuring any specialty software or hardware (fiber channel or host bus adapter ("HBA")) necessary to manage storage and allow the system to access the storage. Customer is responsible for providing fiber channel switches, port upgrades, and other telecommunications and/or network hardware required for the Philips products to physically connect to the storage, regardless of whether Philips provides the storage.

**6. Certified Hardware.**

6.1 Philips shall install the Licensed Software solely on certified hardware pursuant to Philips' specifications where such certified hardware is identified and located on Philips website Hardware Specifications - Philips ([http://www.usa.philips.com/healthcare/product/HCTN198/intellispace-cardiovascular?int\\_origin=2\\_HC\\_landing\\_na\\_us\\_en\\_clinical\\_informatics\\_cardiology\\_informatics\\_more](http://www.usa.philips.com/healthcare/product/HCTN198/intellispace-cardiovascular?int_origin=2_HC_landing_na_us_en_clinical_informatics_cardiology_informatics_more)).

**7. Storage Sizing.**

7.1 Upon request, Philips will provide Customer with estimates of image study sizes for different types of studies that Customer



can use as a general aide to calculate and determine its near-term and long-term storage requirements for Cardiology and HCIS picture archive communication system solution. Customer is responsible determine what storage archive device types and sizes are required to support its Xcelera, Cardiology Enterprise Viewer solution, IntelliSpace Cardiovascular (ISCV), or IntelliBridge Enterprise Licensed Software (IBE), whether through procurement from Philips or utilization of Customer's own existing storage solutions. Customer acknowledges that use of storage varies greatly based on its unique utilization of the system and based on factors that are outside Philips' control. Therefore, and notwithstanding any estimates provided to Customer by Philips, Customer is solely responsible to determine what storage archive device is best suited to meet its needs. As part of its decision making process in connection with archive device storage size, Customer acknowledges that study sizes are affected greatly by (a) changes in the types and amount of modality equipment used, (b) technician discretion in file size creation, and (c) clinical protocols within a department. Customer is solely responsible for system administration for the Xcelera, Cardiology Enterprise Viewer, IntelliSpace Cardiovascular (ISCV), or IntelliBridge Enterprise Licensed Software (IBE), solution, which includes monitoring the storage archive device for its utilization levels and planning any necessary storage changes as Customer's requirements change.

## **8. Unauthorized Patches and Anti-Virus Updates.**

8.1 Customer's installation or use of (a) operating system patches, updates or upgrades; (b) anti-virus updates (except to the DAT files i.e. virus definitions); or, (c) upgrades to anti-virus search engines without prior validation testing and approval by Philips (Unauthorized Updates) may adversely affect the functionality and performance of the Licensed Software. Philips shall perform validation testing of certain Microsoft operating systems, and McAfee and Symantec's anti-virus software during the warranty period. Philips shall have no obligation to validate any other third-party operating system or anti-virus software. If Customer installs or uses Unauthorized Updates, Philips shall have no liability or responsibility for performance of the Licensed Software and the warranty shall be void. If Customer is using Unauthorized Updates when requesting service support or an Unauthorized Update is discovered by Philips after commencing the technical support process, then, prior to being obligated to perform warranty support services during a service period, Philips may require Customer to roll back to the most recent operating system and anti-virus search engine versions that have been validated by Philips as posted on the Philips service internet site.

## **9. Interfaces.**

9.1 Xper IM, Xper Flex Cardio & Xcelera, HCIS, Cardiology Enterprise Viewer and IntelliSpace Cardiovascular (ISCV), and IntelliBridge Enterprise Licensed Software Interfaces (IBE). Philips' obligation to provide any Xper IM, Xper Flex Cardio IM, Xcelera, Cardiology Enterprise Viewer, or TraceMasterVue, Intellispace ECG, IntelliSpace Cardiovascular (ISCV), or IntelliBridge Enterprise Licensed Software (IBE) interfaces is expressly conditioned upon Customer enabling its Hospital Information System (HIS) system to send and receive HL7 messages to and from the applicable Philips products by the date the products are available for first patient use. 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 against the applicable purchase order. 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.

## **10. Customer Controlled Workflow Tools.**

10.1 Certain Philips products contain Customer maintained tools used in the creation and maintenance of interfaces, forms, screens, reports, data mappings, and calculations (Customer Controlled Workflow Tools). Because these tools control what information is presented to the end-user and how the information is presented, Customer must thoroughly test and validate each interface, form, screen, report, mapping, and calculation after making any changes to the Product or to external systems that supply data to the Philips product. Failure to do so could result in information being presented to the end-user in a manner different than originally configured, less desirable to the patient care giver and negatively impacting patient care outcomes. Therefore, prior testing of any of the above changes by the Customer is recommended by Philips. In all cases, Customer is solely responsible for data field population in Philips products directly arising from;

10.1.1 Customer's use of the Customer Controlled Workflow Tools; or,

10.1.2 through the receipt of information delivered from a non- Philips information system that has been modified post project implementation test. These factors are not within Philips control.

## **11. Frequent Data Backup/Disaster Recovery Responsibility.**

11.1 Philips is not responsible for the development or execution of a business continuity/disaster recovery plan or backing up the data and images processed by the products sold under Schedule 3. Philips is also not responsible for backing up the data in the CVIS core data database and any associated files. Customer is responsible for performing frequent backups of any data, patient information or images residing on the repository database, on Philips products, or an archive.

## **12. Statement of Work (SOW).**

12.1 Professional services in connection with Xcelera, Xper, Cardiology Enterprise Viewer, IntelliSpace Cardiovascular (ISCV), or IntelliBridge Enterprise Licensed Software (IBE) shall be performed pursuant to a statement of work (SOW) which the parties

will execute and attach to the applicable quotation, subject to the terms set forth in these Terms and conditions of Sale and the applicable quotation. Philips may reject orders for these Products without an SOW.

### **13. Support Services.**

13.1 During the applicable product warranty period, Philips shall provide, at no charge to Customer, Philips' then- current in-warranty service for the products. Customer must provide Philips with remote access to the Products and shall use Philips Remote Service Data Centre (PRSDC) service to enable Philips to access the system to perform its support obligations.

13.2 Warranty exclusions set forth in Section 8.6 of Philips Terms and Conditions of Sale also apply to Support Services hereunder. The conditions that resulted in the exclusion of product warranty coverage, set forth in Section 8.6, shall also apply to any service provided during an in- warranty or post warranty coverage period.

### **14. Systems Administration Requirement.**

14.1 Customer, at all times, shall have a designated systems administrator that has completed systems administration training for the version of the product running at Customer's site. Systems administration training is set forth in the quotation.

### **15. Migration.**

15.1 Philips standard migration tool set-up service (Migration Tool Set-Up Service) consists of Philips installing a migration solution tool, configuring the migration interface, testing the migration solution tool, and training the Customer to operate and manage the migration tool for Customer to perform the data migration (Migration Set-up Tool Activities). For the purposes of clarification, Migration Set-Up Activities do not include Philips performing the migration, including starting and stopping the migration tool process, loading off-line media, monitoring the process, and correcting the migrated data (and not any Data Migration Project Management Consulting Service).

15.2 Unless Customer purchases a separate data migration project management consulting service from Philips and signs an SOW clearly indicating that Philips will be performing and managing the data migration on the Customers behalf (Data Migration Project Management Consulting Service), Philips is responsible solely to perform the Migration Set-Up Activities.

15.3 In all instances, Philips shall have no responsibility under either its Migration Tool Set-Up Service or Data Migration Project Management Consulting Service to: (a) locate missing studies; (b) fix corrupt media or studies; or, (c) repair failed Customer legacy hardware discovered during the migration service.

15.4 Migration Tool Set-Up Service or Data Migration Project Management Consulting Service to migrate studies affected by the foregoing events. Additionally, Customer shall have the sole responsibility to estimate the number of studies required to be migrated and to pay any additional costs that result from an inaccurate estimate.

**Schedule 4**  
**Connected Care (CC) & Hospital Respiratory Care (HRC) Portfolio Rev 20(T)**

Product Category	Products
Measurement and Monitors	IntelliVue Patient Monitors and Systems
	IntelliVue Telemetry System
	Fetal Monitors
	SureSigns/EarlyVue Vitals Monitors
	Clinical measurements
	MR Patient Care Monitors
Clinical Informatics	IntelliVue Critical Care and Anesthesia
	IntelliSpace Perinatal
	IntelliSpace ECG
	IntelliVue Guardian Systems
	IntelliBridge Family of Solutions
Sleep Therapy	DreamStation
	DreamStation Accessories
Respiratory	Ventilators
Airway Clearance	Cough Assist
Hospital Respiratory Care Supplies	Patient Interface (Masks & Cannulas)
	Circuits
Diagnostic Cardiology Solutions	Stress Testing System (ST80i) Holter Monitoring System (DigiTrak) Cardiographs (PageWriter)
Respiratory Drug Delivery (RDD) Supplies	Aerosol Mask SideStream Nebulizers SideStream Plus Threshold IMT Optichamber LiteTouch Masks Peak Flow Misc Asthma Mouth PiecesOptichamber Diamond Peak Flow MetersProChamber Asthma Pack

**1. Prices.**

- 1.1 Unless stated otherwise on the face of the quotation, the quotation will remain valid for ninety (90) days unless withdrawn or changed by Philips.

**2. Orders.**

- 2.1 Notwithstanding Section 7 of the Philips Terms and Conditions of Sale in the quotation, Philips reserves the right to charge a shipping fee for Hospital Respiratory Care and Respiratory Drug Delivery supplies.
- 2.2 Orders for Hospital Respiratory Care and Respiratory Drug Delivery supplies are accepted through:

Philips Healthcare eStore: (<http://www.philips.com/newhealthcarestore>.);  
Phone: 800-225-0230;  
Email: [medical.supplies@philips.com](mailto:medical.supplies@philips.com); and  
Fax: 800-227-7843

**3. Payment Terms.**

- 3.1 Unless otherwise specified in the quotation, Philips will invoice Customer and Customer will pay such invoice on receipt for each product as follows:
- 3.1.1 100% of the purchase price shall be due thirty (30) days from Philips' invoice date.
- 3.2 Support Services, if any, shall be invoiced and paid as set forth on the quotation.
- 3.3 Payment terms are subject to credit approval.

#### **4. Return Policy.**

- 4.1 If there is a problem with an order, Philips wants to correct it as soon as possible. Please note the following instructions before returning merchandise to Philips.
  - 4.1.1 The Customer Services Department of Philips Healthcare Supplies Center in Nashville , TN must authorize all returns of medical supplies. Please call 1-800-225-0230 for a return authorization number. Customer shall pay all shipping charges for returns.
- 4.2 Returns after sixty (60) days of shipment shall be subject to a restocking charge.
- 4.3 Philips does not accept returns of Supplies Products that have been opened, are expired or damaged. Please contact Philips Healthcare at 1-800-225-0230 for guidance on any returns.

#### **5. Installation.**

- 5.1 For products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by Philips. For products without installation included in the purchase price, acceptance by customer occurs upon delivery. If Customer schedules or delays installation by Philips more than thirty (30) days after delivery, Customer's acceptance of the products will occur on the thirty-first (31st) day after delivery.

#### **6. Philips IntelliVue Products.**

- 6.1 The following applies in the event Customer elects to use the Philips IntelliVue Information Center on Customer provided general network versus dedicating a separate Philips provided IntelliVue Clinical Network to support the communication between the Philips IntelliVue Information Center and the Philips IntelliVue bedside Vital Signs Patient Care Monitors:
- 6.2 The Philips IntelliVue Information Center is a secondary vital signs monitoring tool that is used by Customers to monitor the activity arising from alarms that sound from a Vital Signs Patient Care Monitor at the patient bedside. Philips advises that the likelihood of network or bandwidth outages is generally greater when using a medical device on a general network vs. a network dedicated solely to its use. In the event of a network or bandwidth outage were to directly affect the Philips IntelliVue Information Center's ability to communicate with a bedside Monitor, the Philips IntelliVue Information Center would not be available to get real time alarm information from a bedside Monitor. Accordingly, Customer is reminded that its nursing protocols at the patient room floor must be based on using the Philips bedside Monitor, at all times, as the primary medical device to use and respond to, for monitoring patient's vital signs at the patient bedside.

#### **7. Clinical Informatics Products, and Philips IntelliVue Information Center Product Family.**

- 7.1 The following additional terms shall apply:
  - 7.1.1 Anti-Virus.
    - 7.1.1.2 Philips does not sell anti-virus software with these products. Customer bears the sole responsibility to purchase and manage all virus issues in connection with the products. Use of anti-virus in a manner not recommended in the user manual or without patch validation with Philips is Customer's sole responsibility or risk.
    - 7.1.1.3 Philips IntelliVue Information Center. PIIC iX supports multiple antivirus solutions. See the document PIIC iX and PIIC Antivirus Software Use and Configuration Guide for details.
- 7.2 Prior Validation of Operating System (OS) Updates and/or Upgrades.
  - 7.2.1 Operating System patches introduced by Original Equipment Manufacturers (OEM) can impact the performance of the application resulting in a risk to Patient Safety.
  - 7.2.2 Customers are prohibited from applying operating system patches, point releases, updates, and/or upgrades ("OS Modifications"), prior to their validation by Philips for use with Clinical Informatics Products, and IntelliVue Information Center Family of solutions. Customer is solely responsible for issues arising from use of these products with a non-validated OS Modification. Philips shall post on its technical support website which OS Modifications are validated and approved for use with these products. Philips shall have no obligation under a warranty or services to resolve technical issues arising from these products being run with non-validated OS Modifications and Philips will require that Customer roll back the OS to a validated and approved version prior to being obligated to perform.
  - 7.2.3 technical issue resolution under warranty or service. Philips provides a third-party software validation tool with IntelliSpace Perinatal. Customers are prohibited from applying an OS Modification – including Microsoft security updates - to IntelliSpace Perinatal prior to running an OS Modification through the third party validation tool for IntelliSpace Perinatal.
  - 7.2.4 Philips tests the latest applicable security updates and publishes them as Philips Product Security Status documents. These documents have product-specific vulnerability updates and security-related information such as supported anti-virus software, OS security features, and remote service. Customers can access Philips InCenter portal to access update information.

7.2.5 It is the customers' responsibility to deploy applicable, validated updates at their discretion. <http://www.usa.philips.com/healthcare/about/customer-support/product-security>.

7.2.6 See "Security for Clinical Networks" document for additional security related information.

### 7.3 Interfaces.

7.3.1 Philips' obligation to provide any interfaces is expressly conditioned upon Customer enabling its HIS system to send and receive HL7 messages to and from the applicable Philips products by the date Philips' products are available for first patient use. If Customer has not fulfilled its interface obligations in a reasonable amount of time, Philips may, at its discretion, terminate any interface obligations and refund any pre-paid amounts for interfaces against the applicable purchase order. Upon Philips' issuance of a refund in accordance with this section, Customer shall be deemed to have accepted the applicable Philips products. Customer will execute any documentation reasonably requested by Philips to document such terminated interfaces. Any interfaces terminated shall be re-evaluated under a separate new sales contract.

### 7.4 Frequent Data Backup/Disaster Recovery Responsibility.

7.4.1 Philips is not responsible for the development or execution of a business continuity/disaster recovery plan or back up of data and images processed by the system. Customer is responsible for performing frequent backups of any data, patient information, or images residing on the repository database, on Philips products, or an archive. Recommendations around disaster recovery are included in "Security for Clinical Networks" Section 14.

### 7.5 Statement of Work.

7.1.2 Professional services performed in connection with this transaction shall be performed pursuant to a Statement of Work, which the parties will execute and attach to the quotation, subject to the terms set forth in the quotation.

## 8. Support Services.

8.1 To the extent services for any other products are set forth in the quotation, such service shall be per the Philips then current Terms and Conditions of Service for the period of time indicated on such quotation, which will be provided by Philips and attached hereto.

8.2 Post Warranty Service. Service coverage may vary depending on the product and the use of that product. Accordingly, if Customer elects to purchase post warranty service when Customer purchases products under this Product Specific Schedule, then Customer and Philips shall sign an amendment to the quotation. This amendment shall incorporate the information on the face of the service quotation addressing the description of the products being covered, the price of coverage, payment terms, the period of coverage, the level of support coverage, and the Philips Technology Update Service description, if purchased by Customer. Additionally, such amendment shall incorporate the Medical IT Service Exhibit that provides greater specificity of the support coverage offering being purchased, along with memorializing that the additional terms and conditions applicable to service set forth in the quotation shall apply.

8.3 Warranty exclusions set forth in Section 8.6 of Philips Standard Terms and Conditions of Sale also apply to Support Services. The conditions that resulted in the exclusion of product warranty coverage, set forth in above-mentioned Section 8.6, shall also apply to any service provided during an in- warranty or post warranty coverage period.

## 9. Customer Supplied Network (CSN) Installation and Configuration Responsibilities.

9.1 Philips provides information on which patient monitoring devices (and in what locations) will be connected to the CSN following the standard IntelliVue Clinical Network design rules. During the CSN installation process, Philips is responsible for proper configuration and physical installation of the Philips patient monitoring products ("Philips Products"). In CSN situations, Philips does not configure the network or connect the Philips Products to the network. Customer has ownership of these tasks.

### 9.2 Customer Responsibilities:

9.2.1 Installation. It is Customer's responsibility to configure the network infrastructure devices as specified in the Philips CSN specification document. After Philips has completed physical installation of the Philips Products, it is the Customer's responsibility to connect the Philips Products to the hospital network infrastructure, and to confirm the Philips Products have a network that meets the CSN specification document.

9.2.2 Ongoing Support. As it applies to the Philips Products being used with a CSN, it is Customer's responsibility to maintain the network in a manner that continuously adheres to the CSN specification. Additionally, it is Customer's responsibility to perform the first line of support for all questions related to the Philips Products at the Customer site. It is Customer's responsibility to determine if the problem is a clinical issue, a Philips Products issue, or a network connectivity issue and to contact the responsible party for resolution.

9.3 The Customer agrees is reminded that, unless the Philips Products are being used in a telemetry fashion, the bedside monitor and bedside screen must be used as the primary patient alarm device.

- 9.4 Under no circumstances is Philips responsible for Customer's inability to use Philips Products (including but not limited to loss of patient alarms or data) due to any CSN outages, downtime, or customer failure's to properly maintain or configure the CSN.

**10. Statement of Work.**

- 10.1 Philips shall not accept orders for IntelliSpace Perinatal without a signed statement of work accompanying such order.

**11. Sleep and Respiratory Care Products.**

11.1 Preparation of Site/Installation/Training:

- 11.1.1 Site Preparation: Customer shall be responsible for providing the necessary environment and materials for the proper operation of the Products. In the event the site is not correctly prepared or equipment supplied by Customer is not functioning correctly, which requires Respironics to spend additional time installing products, or a second visit to Customer location, this additional time will be charged to Customer at Respironics standard daily rates plus expenses.

- 11.1.2 Installation: The configuration defined prior to the Respironics technician's arrival will be installed as part of these terms and conditions of sale. Equipment that is not defined prior to arrival and requires additional time to install or a second visit to Buyer's location will be charged to Buyer at Respironics standard daily rates.

- 11.1.3 Training: If applicable, Buyer is responsible for having its personnel available and dedicated to training at the time of installation. Respironics will provide onsite training to technologists, physicians and other personnel in the operation.

- 11.2 Additional BiPAP Conditions: Respironics requires the dealer to have appropriate medical personnel on staff to support patient training and follow up. Such personnel include, but are not limited to, credentialed respiratory therapist, credentialed nursing personnel or physician's assistants.



**Schedule 5**  
**Therapeutic Care Capital Portfolio Rev 20(T)**

Product Category	Products
Emergency Care & Resuscitation (ECR)	AEDs
	ALS Monitor/Defibrillators
Tempus	Tempus Pro Monitor
	Tempus LS Defibrillator
Emergency Care and Resuscitation	AED Consumables
	ALS Consumables

**1. Prices.**

- 1.1 Unless stated otherwise on the face of the quotation, the quotation will remain valid for sixty (60) days unless withdrawn or changed prior to shipment by Philips.

**2. Acceptance.**

- 2.1 Acceptance by Customer occurs upon delivery. Philips will make reasonable efforts to meet Customer's delivery requirements. If Philips is unable to meet Customer's delivery requirements, alternative arrangements may be mutually agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order. If the Customer requests a major delay in the date of delivery of the product, Philips may attempt to arrange re-delivery within a reasonable time or may terminate the order.

**3. Payment Terms.**

- 3.1 Unless otherwise specified in the quotation, Philips will invoice Customer, and Customer will pay such invoice on receipt as follows:
- 3.1.1 100% of the purchase price shall be due thirty (30) days from Philips' invoice date.
- 3.2 Support Services, if any, shall be invoiced and paid as set forth on the quotation.
- 3.3 Payment terms are subject to credit approval.

**4. Installation.**

- 4.1 Deployment and installation are Customer's responsibility.

**5. Operating Software License.**

- 5.1 Purchase of a hardware product includes a license to use the software contained therein, which may not be reverse engineered, decompiled, altered or transferred. Customer agrees that it will not attempt to defeat any copy protection mechanism.

**Schedule 6**  
**Connected Care (CC) &**  
**Medical Consumables and Sensors (MCS) Portfolio Rev 20(T)**

Product Category		Products Consumables and Sensors (non-serialized)
Patient Care	Medical Consumables and Sensors (MCS)	Accessories
		ECG Cables and Lead sets
		ECG Electrodes
		Fetal Measurements
		Gas Measurements
		NIBP Cuffs
		Paper
		SpO2
		Temperature
	Emergency Care and Resuscitation	AED Consumables
		ALS Consumables
	Newborn Solutions	Jaundice
		Calming and Soothing Therapy Support

**1. Prices.**

1.1 Unless stated otherwise on the face of the quotation, the quotation will remain valid for sixty (60) days unless withdrawn or changed prior to shipment by Philips.

**2. Orders.**

2.1 Notwithstanding Section 7 of the Philips Terms and Conditions of Sale in the quotation, Philips reserves the right to charge a shipping fee for Medical Consumables and Sensors.

2.2 Orders for Medical Consumables and Sensors are accepted through:

Philips eStore: (<https://www.patientcare.shop.philips.com/>);  
Phone: 800-225-0230, Option1;  
Email: [medical\\_supplies@philips.com](mailto:medical_supplies@philips.com); and  
Fax: 1-800-947-3299

**3. Payment Terms.**

3.1 100% of the purchase price shall be due thirty (30) days from Philips' invoice date.

**4. Return Policy.**

4.1 If there is a problem with an order, Philips wants to correct it as soon as possible. Please note the following instructions before returning merchandise to Philips.

4.2 The Customer Services Department of Philips Supplies Center in Nashville, TN must authorize all returns of medical supplies. Please call 1-800-225-0230 for a return authorization number. Customer shall pay all shipping charges for returns.

4.3 Returns after sixty (60) days of shipment shall be subject to a 15% restocking charge.

4.4 Philips does not accept returns of Consumables Products that have been opened, are expired or damaged. Please contact Philips at 1-800-225-0230 for guidance on any returns.

**Schedule 7**  
**EDI Software and Services Solutions Rev 20(T)**

Product Category	Products
Enterprise Diagnostic Imaging (EDI)	Philips MyVue
	Philips Vue Reporting
	Philips Vue Motion
	Philips Vue PACS
	Philips Vue Explorer (WFM)
	Philips Vue Beyond
	Philips Vue Archive
	Philips Vue Advanced Visualization Modules
	Philips Vue Orchestrator

Section 3 (Retention of title until full payment) and Section 5 (Lease and Trade-In) of the Philips standard terms and conditions of sale do not apply to this Schedule.

The following additional terms shall apply to sale of Licensed Software Products ("EDI Software and Services Solutions") under this Schedule:

**1. License Term & Limitations.**

Notwithstanding anything contrary in Philips standard terms and conditions of sale, the following license terms and restrictions shall apply and govern in the event of conflict with terms expressly set forth in the Philips standard terms and conditions of sale:

**1.1 Definitions.**

1.1.1 "License Commencement Date" shall mean the date that Philips makes the EDI Software and Services 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 the Customer Provided Hardware or purchased through Philips and related network infrastructure. Acceptance of all EDI Software and Services Solutions shall occur upon the License Commencement Date. Customer shall promptly sign the Philips' Customer Acceptance Form, if requested, 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 the License Commencement Date for the first site, unless otherwise provided on a Quotation.

1.1.2 "Quotation" shall mean the Philips quote affixed to this schedule signed by the Customer for the Philips EDI Software and Services Solutions. Each Quotation shall list all the fees and any license limitations applicable to customers 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.

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

1.2 .Term License Model with Separate Maintenance and Support Purchase Option. Under this sale model, each EDI Software and Services Solution license shall commence upon the License Commencement Date (as defined in Section 1.1 above), and continue for the license period set forth on the Quotation ("Term License"). Furthermore, in addition to the warranty set forth in Section 1.4, Philips shall provide the maintenance and support services set forth in Schedules A and B affixed to this schedule for a period of ninety (90) days. Customer's purchase of maintenance and support services post warranty of the Term License are optional and not required. Therefore, Philips shall have no obligation to perform maintenance and support on the Term License software, for any period post warranty that Customer has elected not to purchase maintenance and support agreement coverage. The license to a EDI Software Solution shall expire upon the final anniversary date of the License Commencement Date based on the number of years in the Term License, unless customer renews the license term prior thereto. In the event Customer elects to purchase maintenance and support services for a post warranty period, such maintenance and support services shall be provided under the terms of this Terms and Conditions of Sale, including Schedules A and Schedule B, as applicable; 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.

1.3 Solution Subscription Option. Under the subscription service model, commencing upon the License Commencement Date the 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 Schedules A and Schedule B, as applicable, affixed to this schedule for the entire Subscription License Term for one annual fee ("EDI Software and Services Solutions Subscription Option"). Thereafter, the then current EDI Software and Services Solutions 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.

1.4 Products Warranties for all sales models 1.2-1.3. The warranties set forth in Section 9 (except Section 9.2) in the baseline

Agreement shall apply to sales of the EDI Software and Services Solutions purchased under Section 1.2-1.3 of this Schedule.

- 1.5 All licenses are subject to a limited number of sites (by physical address), users, connections and study or exam volume set forth in the Quotation. 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 EDI Software and Services Solutions Licensed Software and "Users" shall mean the number of named users that are employees or contract temporary employees by the Customer legal entity expressly set forth on the Quotation and/or Statement of Work. In no event shall GE, Siemens, or another medical device manufacturer, distributor, or independent service organization use or have access to EDI Software and Services Solutions. Customer shall have the right to replace a User with a different named User at no additional charge; provided that, the User being replaced is permanently no longer using the EDI Software and Services Solutions Licensed Software to benefit Customer.
- 1.6 Prior to the assignment of any licenses, including an assignment pursuant to a purchase of substantially all of the 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 the Customer purchase additional Licenses to address a change in the number of Users, Sites, connections and Annual Exam Volume prior to the use of EDI Software and Services Solutions Licensed Software for such events.
- 1.7 Subject to fulfillment of any payment obligations by Customer arising from the use of the EDI Software and Services Solutions Licensed Software, Philips grants Customer the applicable license under the model quoted. All EDI Software and Services Solutions licenses are, non-exclusive, non-transferable and subject to compliance with the usage, rights and restrictions set forth herein and solution description on the Quotation.
- 1.8 Termination Fees. The sales models offered by Philips under Sections 1.2 & 1.3 are non-cancellable for their full term set forth in the Quotation ("Term"). Accordingly, 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 EDI Software and Services 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.

## **2. Billing based on Customer Delays, Offset & Pricing.**

- 2.1 Billing. Customer shall pay Philips invoices per the payment terms set forth in the Quotation or within thirty
- 2.2 (30) days of Philips' invoice date. First payment (excluding Upfront Fee as described in the Quotation) will be due and payable within twelve (12) months from contract signing date or upon License Commencement Date, whichever comes sooner. Following a period of two (2) years from the receipt of a customer order, Philips shall maintain the right to bill Customer for all fees associated with such project regardless if Customer decides to proceed with the project or not.
- 2.3 Offset. Payment obligations for the fee set forth on a Quotation for each EDI Software and Services Solutions are independent fee obligations not subject to offset.
- 2.4 Philips reserves the right to adjust customer list pricing and (or) net pricing, during the Term of the agreement, in accordance with the Consumer Price Index published by the United States Department of Labor in its website at <http://www.bls.gov/cpi>. Such adjustment in pricing requires thirty (30) day written notice, will not be retroactive, cannot start before first year of contract and will not exceed more than five percent (5%) change annually.

## **3. Pricing Harmonization.**

- 3.1 In an effort to simplify and harmonize Philips product portfolio pricing structure, Philips may, no more than once during the term of the agreement, unilaterally adjust the price list and discount schedule for products under this Agreement, with no impact to the current net price.
- 3.2 Philips will:
  - 3.2.1 Provide 30 days' written notice prior to fixing the net price of the product(s) sold under the agreement for 12 months (the "Lock Period") at the net price (the "Lock Price") of the product(s) in effect at the time of Customer's receipt of the written notice.
  - 3.2.2 Provide an updated agreement price file showing the new list price and new discount, which together will not change the Lock Price set at the beginning of the Lock Period.
- 3.3 Upon termination of the Lock Period, the net price of the product(s) will be maintained in the manner defined in the agreement.

## **4. Philips Ownership in the EDI Software and Services Solutions.**

- 4.1 The Licenses granted under these Philips Additional Terms and Conditions of Sale for all EDI Software and Services

Solutions offered under Sections 1.2-1.3 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. Except for the licenses set forth in this exhibit for the term (under options offered per subsections 1.2-1.3), Philips retains all rights, title, and interest to all intellectual property in or arising from the Licensed Software.

- 4.2 Third party software. Unless otherwise specified in the Quotation, the EDI Software and Services Solutions may include software from other commercial suppliers who require Philips to pass through, or otherwise have Customer agree to, their end user license terms. Such terms are specified in [https://images.philips.com/is/content/PhilipsConsumer/Campaigns/HC20140401\\_DG/Documents/Pass-through-August-2020.pdf](https://images.philips.com/is/content/PhilipsConsumer/Campaigns/HC20140401_DG/Documents/Pass-through-August-2020.pdf) or otherwise provided via means including software delivery. Philips does not warrant the operation of third party software, rather all third party software acquired by Customer from Philips is subject to the warranties contained in the third party software end user terms.

## 5. Cancellation.

- 5.1 Orders are non-cancellable for Products installed and accepted by Customer.

## 6. Statement of Work.

- 6.1 A Statement of Work 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. Server Hardware.

- 7.1 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 & IT Infrastructure"). All Customer provided hardware must meet Philips certified hardware specification requirement. Such requirement shall be listed on a Quotation or provided in the Statement of Work. The cost of any new hardware or hardware change to use the EDI Software and Services Solutions, including any updates or upgrades provided by Philips under Section 1.2-1.3, shall be Customer's obligation and not included in a purchase of EDI Software and Services Solution.
- 7.2 Philips Pass Through Resale IT Infrastructure. In limited cases, Philips may offer a hardware pass through resale service for servers that can be used with EDI Software and Services Solutions; however, this is offered purely for one purchase order fulfillment convenient purposes and Customer shall remain responsible to work directly with the vendor for such hardware directly for any break/fix non software issues and purchase any maintenance and support directly with such vendor.
- 7.3 Philips Provided IT Infrastructure. Customer may elect to purchase hardware from Philips with an option to purchase maintenance and support with Philips for any break/fix issues as described in Schedules A or B.

## 8. Customer Managed IT Support Structure.

- 8.1 Customer Client Device Types. EDI Software and Services Solutions may solely be used with client device types and minimum configuration specifications set forth on the Quotation, Statement of Work or Project Implementation Plan. In all cases, EDI Software and Services Solutions are not designed nor recommended for mobile device use. Philips shall not be responsible for issues arising therefrom.
- 8.2 PACS 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.
- 8.3 Data Archiving. Customer is required to have an archive for all EDI Software and Services Solutions that are used as diagnostic tools to provide patient care (Workflow Tool are Excluded). Customer is responsible for procuring any specialty software or hardware (fiber channel or host bus adapter ("HBA")) necessary to manage storage and allow the system to access the storage. Customer is responsible for providing fiber channel switches, port upgrades, and other telecommunications and/or network hardware required for the Philips products to physically connect to the storage, regardless of whether Philips provides the storage as a one off third-party item at Customer's request.
- 8.4 Storage Sizing Upon request, Philips will provide Customer with estimates of image study sizes for different types of studies that Customer can use as a general aide to calculate and determine its near-term and long-term storage requirements for EDI Software and Services Solutions, whether through procurement from Philips as a third-party item or utilization of Customer's own existing storage solutions. Customer acknowledges that use of storage varies greatly based on its unique utilization of the system and based on factors that are outside Philips' control. Therefore, and notwithstanding any estimates provided to Customer by Philips, Customer is solely responsible to determine what storage archive device is best suited to

meet its needs as long as it meets the requirements published by Philips. As part of its decision-making process in connection with archive device storage size, Customer acknowledges that study sizes are affected greatly by:

8.5.1 changes in the types and amount of modality equipment used,

8.5.2 technician discretion in file size creation, and

8.5.3 clinical protocols within a department. Customer is solely responsible for system administration for the Software Solutions, which includes monitoring the storage archive device for its utilization levels and planning any necessary storage changes as Customer's requirements change.

8.5 Frequent Data Backup/Disaster Recovery Responsibility. Philips is not responsible for the development or execution of a business continuity/disaster recovery plan or backing up the data and images processed by the EDI Software and Services Solutions. Customer is responsible for performing frequent backups of any data, patient information or images residing on the repository database on Philips EDI Software and Services Solutions, or an archive, on a daily basis at minimum.

8.6 Unauthorized Patches and Anti-Virus Updates. Customer's installation or use of (a) operating system patches, updates or upgrades; (b) anti-virus updates (except to the DAT files i.e., virus definitions); or, (c) upgrades to anti-virus search engines without prior validation testing and approval by Philips ("Unauthorized Updates") may adversely affect the functionality and performance of the EDI Software and Services Solutions. Philips shall perform validation testing of certain Microsoft operating systems, and certified antivirus software published in the documentation during the warranty period. Philips shall have no obligation to validate any other third-party operating system or anti-virus software. If Customer installs or uses Unauthorized Updates, Philips shall have no liability or responsibility for performance of the Licensed Software and the warranty shall be void. If Customer is using Unauthorized Updates when requesting service support or an Unauthorized Update is discovered by Philips after commencing the technical support process, then, prior to being obligated to perform warranty support services during a service period, Philips may require Customer to roll back to the most recent operating system and anti-virus search engine versions that have been validated by Philips as posted on the Philips service internet site.

8.7 Systems Administration Requirement. Customer, at all times, shall have a designated systems administrator that has completed systems administration training for the version of the EDI Software and Services Solutions running at Customer's site. Systems administration training is set forth in the Quotation.

8.8 If Customer purchases Vue VNA, Studies (regardless DICOM or non-DICOM) ingested in the Vue VNA from other sources that are outside of contract scope set forth in the Quotation will be charged the same VNA storage rate under the Agreement unless otherwise quoted separately.

## **9. Data Usage.**

9.1 Philips may use de-identified information to improve the EDI Software and Services 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 EDI Software and Services Solutions 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 EDI Software and Services Solutions.

**Schedule A**  
**Annual Maintenance and Support for EDI Software and Service Solutions other than PACS**

**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 twenty- four hours per day, seven days per week including Philips recognized holidays.
- 1.2 Remote Access & Diagnostics. Philips may remotely access the EDI Software and Services Solutions to perform Services. Customer shall provide Philips remote access to the EDI Software and Services 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 a.m. to 5:00 p.m. 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 EDI Software and Services Solutions 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 EDI Software and Services Solutions, 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 as part of the Upgrade Project, additional fees may apply.
  - 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 EDI Software and Services Solutions that involves modifications to the interface specifications, Philips will provide a quote to Customer for additional professional services fee and requires that detailed technical information on such modifications be made available to Philips at least ninety (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 EDI Software and Services Solutions to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the 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 EDI Software and Services Solutions.

**3. Software Versions and Updates.**

- 3.1 If a new software version or update is available for the EDI Software and Services Solutions, and the requirements of the Agreement are satisfied, then Philips will upgrade the EDI Software and Services Solutions application software during the term of the Agreement as follows:
  - 3.1.1 Philips will provide new software versions and updates of software for the licensed EDI Software and Services Solutions applications originally purchased by Customer. 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 is not included. Hardware updates and replacement are not included.
  - 3.1.2 Functionality. Customer is entitled to Updates and Upgrades for the EDI Software and Services Solutions applications Philips makes generally commercially available to customers having maintenance and support on the same EDI Software and Services Solutions application with the same software version and purchased options, original purchased by Customer. Customer acknowledges that certain functionality in current and previous software versions may not be available in future new software versions.
  - 3.1.3 "Updates" means fixes or corrections for Software bugs to enable the Software to perform in accordance with its Documentation which is typically designated by a change in the third number in the series. Software Update is made generally available to its customer that are under a service or maintenance agreement without charge. Updates do not include new products, modules or extensions for which Philips elects to charge separately.
  - 3.1.4 "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 are typically designated by a change in the first or second number in the series. Software Upgrades are made generally available to its customer that are under a service maintenance agreement without charge provided however, Customer will be charged for



professional services fees and other fees as a result of a change to the Server Hardware associated with the Upgrades. 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.

- 3.1.5 Hardware updates and replacement. Software versions, updates and fixes may require hardware updates or replacement. 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.

### 3.2 To receive a new software version:

- 3.2.1 Customer must be in compliance with all terms and conditions of this Exhibit and the Agreement including the availability of PRSDC capability and access to the EDI Software and Services Solutions 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 EDI Software and Services Solutions that will receive the version or update must meet the specifications of the new software version. Customer shall provide the EDI Software and Services Solutions hardware or software necessary to meet such specifications.

- 3.3 Unless specifically included elsewhere in this Agreement, software versions and updates do not include: applications that were not purchased with the EDI Software and Services 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.**

- 4.1 During the term of the Agreement Philips will assign a resource familiar with the Customer account, key stakeholders, and contract coverage to provide the following:
  - 4.1.1 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 EDI Software and Services Solutions service issues resolved during the previous period and review any open or unresolved issues.
  - 4.1.2 Prior to delivering any new software version, Philips will coordinate with the Customer assigned resource to identify and mitigate dependencies relative to the software upgrade and other service agreement entitlements.
  - 4.1.3 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.**

- 5.1 If applicable, Philips and Customer will annually review the EDI Software and Services 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.

## 6. **Hardware Support Coverage.**

- 6.1 If Server Hardware is purchased from Philips and Customer elects to purchase maintenance and support from Philips, Philips or Philips designated third parties, will provide hardware support services during standard coverage hours, Monday through Friday, 8:00 AM to 5:00 PM local time, excluding Philips recognized holidays. Hardware support coverage provides Customer's technical or biomed support organization with clinical and technical phone support, troubleshooting, parts or repairs as follows:
  - 6.1.1 Support Parts. If included in the Agreement, then Philips will provide the technical and clinical phone support as well as parts for corrective services for Covered System hardware covered under this Schedule. Unless otherwise specified, parts will be shipped via priority delivery.
  - 6.2 Onsite. Philips or Philips designated Original Equipment Manufacturer (OEM) Service representatives, or third parties will provide the parts, labor and travel for corrective Services for Hardware covered in the Service Agreement Monday through Friday, 8:00 AM to 5:00 PM local time.

**Schedule B**  
**Annual Maintenance and Support for PACS Software and Service Solutions**

**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 twenty- four hours per day, seven days per week including Philips recognized holidays.
- 1.2 Remote Access & Diagnostics. Philips may remotely access the EDI Software and Services Solutions to perform Services. Customer shall provide Philips remote access to the EDI Software and Services Solutions.
- 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.
- 1.4 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.**

Philips supports DICOM and HL7 communication to and from the EDI Software and Services Solutions 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 If the EDI Software and Services Solutions, 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 as part of the Upgrade Professional Services fees.
- 2.2 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 EDI Software and Services Solutions that involve modifications to the interface specifications, Philips requires that detailed technical information on such modifications be made available to Philips at least ninety (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 EDI Software and Services Solutions to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the 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 a EDI Software and Services Solutions.

**3. Software Versions and Updates.**

- 3.1 If a new software version or update is available for the EDI Software and Services Solutions, and the requirements of the Agreement are satisfied, then Philips will upgrade the EDI Software and Services Solutions application software during the term of the Agreement for a Professional Services fee as follows:
  - 3.1.1 Philips will provide new software versions and updates of software for the licensed EDI Software and Services Solutions applications originally purchased by Customer. 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 is not included. Hardware updates and replacement are not included.
  - 3.1.2 Functionality. Customer is entitled to updates and upgrades for the EDI Software and Services Solutions applications Philips makes generally commercially available to customers having maintenance and support on the same EDI Software and Services Solutions application with the same software version and purchased options, original purchased by Customer. Customer acknowledges that certain functionality in current and previous software versions may not be available in future new software versions.
  - 3.1.3 "Updates" means fixes or corrections for Software bugs to enable the Software to perform in accordance with its Documentation which is typically designated by a change in the third number in the series. Software Update is made generally available to its customer that are under a service or maintenance agreement without charge. Updates do not include new products, modules, or extensions for which Philips elects to charge separately.
  - 3.1.4 "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 are typically designated by a change in the first or second number in the series. Software Upgrades are made generally available to its customer that are under a service maintenance agreement without charge provided however, Customer will be charged for professional services fees and other fees as a result of a change to the Server Hardware associated with the Upgrades. 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.
  - 3.1.5 Hardware updates and replacement. Software versions, updates and fixes may require hardware updates or replacement. 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.

3.2 To receive a new software version:

- 3.2.1 New Order for professional services and hardware, if purchasing from Philips, and a statement of work;
- 3.2.2 Customer must be in compliance with all terms and conditions of this Exhibit and the Agreement, including the availability of PRSDC capability and access to the EDI Software and Services Solutions by Philips personnel;
- 3.2.3 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,
- 3.2.4 the EDI Software and Services Solutions that will receive the version or update must meet the specifications of the new software version. Customer shall provide the EDI Software and Services Solutions hardware or software necessary to meet such specifications.

3.3 Unless specifically included elsewhere in this Agreement, software versions and updates do not include: applications that were not purchased with the EDI Software and Services 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. Annual Review.**

- 4.1 If applicable, Philips and Customer will annually review the EDI Software and Services 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.

**5. Customer Requirements.**

- 5.1 Minimum Network Requirements. Customer shall provide at a minimum a switched 1 Gb/s local area network (LAN) and 5ms latency. Provided Customer with sites reading large studies, such as large CTs (study size > 700 MB and number of frames > 1000) and mammography tomosynthesis Studies, Customer shall provide a 1 Gb/s network adapter and 1 Gb/s end-to-end connection to the server. For Study acquisition scenarios that require 'stat' interpretation, Hardware (DICOM processors and storage modules) and Client Devices must reside on a contiguous 1GB/s switched LAN. DSL, cable modem, satellite and other non-commercial-grade technologies should not be used due to high-latency. Issues including delays with image retrieval, delays in Study migration between servers/locations, and application responsiveness issues (pauses, halting) may be experienced when the Software Services is used on a network that does not meet the Minimum Network Requirements.
- 5.2 Network Access. Customer shall provide Philips with 24x7 direct VPN remote network access to the Customer Provided Hardware to enable Philips to monitor, maintain, upgrade and support the PACS Services. Customer must provide Philips with administrator access to all Software and third-party software installed on the Customer Provided Hardware. Customer will allow Philips to establish a site-to-site VPN using either a Philips managed firewall/VPN device or a Customer managed VPN device for secure access to Customer Provided Hardware. The Customer shall allow the Customer Provided Hardware to send alert messages over the VPN to Philips for proactive monitoring. The Customer will work with Philips to establish the VPN and enable the required access to support the Customer Provided Customer Provided Hardware. If the VPN is established using Customer's VPN device AND the Customer Provided Hardware is assigned a private IP, the Customer will need to work with Philips to translate the private IP to something unique to both networks. This is not necessary if using a Philips supplied firewall/VPN device.
- 5.3 Customer shall allow outgoing e-mail from the Customer Provided Hardware to access Philips SMTP e-mail service. Email access is required in order for Philips to monitor, maintain, upgrade and support the PACS Services which Customer must use Philips' secure managed SMTP relay in order to avoid any possible transmittal of unencrypted sensitive data or PHI. Upon reasonable advance notice, Customer shall provide Philips personnel or subcontractors with physical access to all Customer Provided Hardware to support, maintain and upgrade such Customer Provided Hardware.
- 5.4 Customer shall notify Philips of any planned VPN connection, network outages or configuration changes that impact Philips remote monitoring or servicing the Customer Provided Hardware. Philips shall not be liable for remote support availability issues or other service delays caused by Customer's failure to permit remote access. If Customer is using Philips Cloud and/or archiving services, a Philips managed VPN device is required.
- 5.5 Under no circumstances shall users be permitted to access the Software Services remotely except via a Customer VPN providing adequate security and network functionality establishing a 1 GB connection between the Client Device being used remotely and the server for the Software Services. Philips shall have no liability under this Agreement for events arising from or use of the Software Services remotely by users in a manner not meeting the foregoing requirements.
- 5.6 Modalities. Each Customer modality connected to the EDI Software and Services Solutions must have a published DICOM format (or successor industry standard) conformance statement. Philips will provide connectivity testing for all Modalities without charge for the initial installation per the project implementation plan. Thereafter, any such services shall be chargeable at Philips then current professional services rates. Philips will not validate the quality of the data generated by Customer modalities. Philips will confirm that the modality will connect to the EDI Software and Services Solutions and the EDI Software and Services Solutions will be able to store and display the data as delivered by the modality. Philips will cooperate with Customer's Modality vendors without charge to troubleshoot any Modality connectivity issues.
- 5.7 No Modification of Customer Provided Hardware. Customer may not modify, relocate, or install third-party software on the

Customer Provided Hardware without Philips' prior written consent. Philips will attempt to reasonably accommodate any Customer requests to relocate Customer Provided Hardware.

## 6. Customer Support.

### 6.1 Customer Support

- 6.1.1 Customer may report issues or obtain technical support 24 hours a day, 7 days a week by telephoning 877-328-2808 or online web portal. Philips shall respond to Customer by phone during the Coverage Period for failures rendering all functionality or a substantial proportion of functionality unavailable or unusable which significantly impacts multiple active users and/or affects patient care ("Critical Failure") of any service plan within 60 minutes of (i) call receipt within the Coverage Period or (ii) commencement of the next Coverage Period if calls are received after hours or within less than 60 minutes from the end of the current Coverage Period ("Call Response Time"). Prior to contacting Philips, Customer shall perform any problem determination procedures, diagnostic activities and actions detailed by Philips in the Documentation or other customer communications.
- 6.1.2 Philips includes Philips' proprietary remote management service ("RMS") which, when configured and enabled, allows Philips to remotely monitor, diagnose and resolve a variety of software issues, and remotely install Updates, through a secure, encrypted internet connection or a secure remote service access ("SRSA") virtual private network ("VPN") connection. As a condition of Philips performing services described herein, Customer shall permit Philips to use its remote access tools as its first call response method for software service requests.
- 6.1.3 Philips will provide Customer with Customer-requested IP address changes, native DICOM connections, technical Training and other non-warranty support and services upon request at Philips' then published rates.
- 6.2 Philips shall have no obligation or liability for Software Services problems attributable to any of the following and Customer shall pay Philips, at Philips' then current rates, for any time Philips spends diagnosing or correcting issues caused by any of the following:
  - 6.2.1 Modifications, additions or attachments to the Operating Environment, or Software Services, unless such modifications are performed by, and at the request of, Philips and such additions and attachments are purchased from, or specified by, Philips;
  - 6.2.2 Customer's failure to (i) follow the Documentation; (ii) perform, or permit Philips, to perform routine maintenance; (iii) adhere to the Operating Environment; or (iv) adhere to site preparation and environmental specifications;
  - 6.2.3 Misuse, abuse, accident, vandalism, viruses or any other malicious or negligent act or omission by a party that is not under the direct control of Philips;
  - 6.2.4 Environmental conditions, moisture or water, excessive radiation, improper servicing or fire;
  - 6.2.5 Electrical problems caused by power surges, lightning or Customer's wiring or electrical supply;
  - 6.2.6 Network issues, problems caused by Customer's other vendors, or issues related to or caused by non-Philips' equipment, hardware or software.
  - 6.2.7 The Philips customer support center will provide connectivity testing from Philips PACS system to the customer supplied network; any network connectivity issue beyond the Philips managed system will require customer network engineering support.
- 6.3 Supported Release. Philips supports the current product release and one prior product release (a "Supported Release"). A prior product release is the most recent product release with a lower release number than the current product release. Philips' service level commitments, including the uptime performance warranty, will not apply if Customer is not using a Supported Release.

## 7. Hardware Support Coverage.

- 7.1 If Server Hardware is purchased from Philips and Customer elects to purchase maintenance and support from Philips, Philips or Philips designated third parties, will provide hardware support services during standard coverage hours, Monday through Friday, 8:00 AM to 5:00 PM local time, excluding Philips recognized holidays. Hardware support coverage provides Customer's technical or biomed support organization with clinical and technical phone support, troubleshooting, parts or repairs as follows:
  - 7.1.1 Support Parts. If included in the Agreement, then Philips will provide the technical and clinical phone support as well as parts for corrective services for Covered System hardware covered under this Schedule. Unless otherwise specified, parts will be shipped via priority delivery.
- 7.2 Onsite. Philips or Philips designated Original Equipment Manufacturer (OEM) Service representatives, or third parties will provide the parts, labor and travel for corrective Services for Hardware covered in the Service Agreement Monday through Friday, 8:00 AM to 5:00 PM local time.

**Schedule 8**  
**MRI Coil and Disease Management Solutions Portfolio Rev 20(T)**

Product Category	Products
Magnetic Resonance Imaging (MRI) Coils	Capital Coils
Consumables	Consumables Coils
Disease Management Solutions	UroNav, DynaCAD, Disposable Items, Misc. HW & SW options and accessories

**1. Prices.**

- 1.1 Unless stated otherwise on the face of the quotation, the quotation will remain valid for sixty (60) days unless withdrawn or changed by Philips DS North America, LLC.

**2. Shipment.**

- 2.1 Philips DS North America, LLC will use reasonable efforts to ship the product to the Customer (i) by the mutually agreed upon shipment date, (ii) by the date stated in the quotation, or (iii) as otherwise agreed in writing. Philips DS North America, LLC will ship the product according to Philips DS North America, LLC's standard commercial practices.

**3. Payment Terms.**

- 3.1 Quotation. Philips may quote and invoice the Philips DS North America, LLC products in the name of its affiliate, Philips DS North America, LLC.
- 3.2 Payment Terms: Unless otherwise specified in the quotation, Philips DS North America, LLC's will invoice Customer and Customer will pay such invoice on receipt as follows: 100% of the purchase price shall be due thirty (30) days from Philips DS North America, LLC's invoice date.
- 3.3 Purchase Orders. Customer must submit separate and unique purchase orders for the Products listed in this Product Specific Schedule to Philips DS North America, LLC.
- 3.3.1 For Philips DS North America, LLC:  
Philips DS North America, LLC.3650 NE 53rd Avenue  
Gainesville, FL 32609  
Tel: 1-877-468-4861
- 3.4 Invoices. Unless otherwise specified in the quotation, Philips DS North America, LLC will issue one invoice(s) for the Products identified on this Product Specific Schedule under "Philips DS North America, LLC" and a separate and unique invoice(s) for the Products listed in all other Product Specific Schedules under "Philips". Philips DS North America, LLC will invoice Customer, and Customer will pay such invoice for each product in accordance with the payment terms set forth in the applicable Product Specific Schedule attached to these Terms and Conditions of Sale and remit payment to the locations stated in each invoice.
- 3.5 Credit Approval. Payment terms are subject to credit approval.
- 3.5.1 Support Services. If any, shall be invoiced and paid as set forth on the quotation.

**4. Return Policy.**

- 4.1 If there is a problem with an order, Philips DS North America, LLC wants to correct it as soon as possible. Please note the following instructions before returning merchandise to Philips DS North America, LLC.
- 4.2 Buyer must first receive a Returned Goods Authorization (RGA) from the Philips DS North America, LLC Customer Service Department in Gainesville, Florida at 1-877-468-4861 Philips DS North America, LLC. If an RGA is issued, Buyer is responsible for all costs associated with the return. Returns will be subject to a fifteen percent 15% restocking fee.
- 4.3 Returns after sixty (60) days of shipment shall be subject to a restocking charge.
- 4.4 Philips DS North America LLC does not accept returns of Consumables Products that have been opened, are expired or damaged. Please contact Philips DS North America LLC Customer Service Department at 1-877-468- 4861 for guidance on any returns.

**5. Installation.**

- 5.1 For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by Philips DS North America, LLC. For Products without installation included in the purchase price, acceptance by customer occurs upon delivery. If Customer schedules or delays installation by Philips DS North America, LLC, more than thirty (30) days after delivery, Customer's acceptance of the Products will occur on the thirty-first (31st) day after delivery.

**6. Product Warranty.**

- 6.1 In addition to the limited warranties stated herein, Philips DS North America, LLC may provide limited product-specific warranties that are set forth in separate Philips DS North America, LLC warranty documents incorporated herein by reference.

**STANDARD PRODUCT WARRANTY PERIODS**

MRI Coils - Three (3) years, parts and factory repair labor  
Disease Management Solutions Products - One (1) year, parts and factory repair labor  
Sentinelle coils -One (1) year, parts and factory repair labor  
Parts and Accessories - Ninety (90) days, replacement Supplies  
Consumable Items and repaired product - Thirty (30) days, replacement

- 6.2 Philips DS North America, LLC's sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips DS North America, LLC's option, to the repair or the replacement of the product or a portion thereof, within thirty (30) days after receipt of written notice of such material breach from Customer ("Product Warranty Cure Period") or, upon expiration of the Product Warranty Cure Period, or to a credit or refund of a portion of the purchase price paid by Customer. Warranty service outside of normal working hours (i.e., 8:00 AM to 5:00 P.M., Monday through Friday, excluding Philips DS North America, LLC's observed holidays), will be subject to payment by Customer at Philips DS North America, LLC's standard service rates.
- 6.3 Customer shall at all times during the warranty period specified in this Agreement provide Philips DS North America, LLC suitable connection to the product through the Customer's network for Philips DS North America, LLC use in remote servicing of the product.



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

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

Section 3 (Retention of title until full payment) and Section 5 (Lease and Trade-In) of the Philips standard terms and conditions of sale do not apply to this Schedule.

**1. Payment Terms.**

- 1.1 Customer shall pay Philips invoices per the payment terms set forth in the Quotation or within thirty (30) days of Philips' invoice date.

**2. License Term & Limitations.**

- 2.1 Notwithstanding anything contrary in Philips standard terms and conditions of sale, the following license terms and restrictions shall apply and govern such issues:

- 2.1.1 "License Commencement Date" shall mean the date that Philips makes the EOI Software Solution(s) available to Customer for first use consistent with the usage rights and restrictions under the terms of this Agreement, upon completion of its installation on the Customer server provided by Customer as part of the Customer Provided Hardware and Network Infrastructure. Acceptance of EOI Software Solutions shall occur upon the License Commencement Date. Customer shall promptly sign the Philips' Customer Acceptance Form, if requested, at such time.
- 2.1.2 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 the License Commencement Date, subject to the license provisions in the baseline agreement and any usage limitations set forth on the quote, as well as Sections 2.1.5-2.1.7, and 3-6 of this Schedule. Furthermore, in addition to the warranty set forth in Section 2.1.4, 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 period are optional. However, 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.
- 2.1.3 EOI Software Solution Subscription Option. Under the subscription service model, commencing upon the License Commencement Date the 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.
- 2.1.4 Products Warranties. The warranties set forth in Section 9 (except Section 9.2) in the Philips standard terms and conditions of Sale shall apply to sales of the EOI Software Solutions purchased under Section 2.1.2 of this schedule.
- 2.1.5 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 the Customer legal entity. In no event shall another medical device manufacturer, distributor, or independent service organization use or have access to EOI Software Solutions.
- 2.1.6 Prior to the assignment of any Licenses, including an assignment pursuant to a purchase of substantially all of the 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 the 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 Solution Licensed Software for such events.
- 2.1.7 Subject to fulfillment of any payment obligations by Customer arising from the use of the EOI Solution Licensed Software, 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. Billing based on Customer Delays and Pricing.**



3.1 All installations of the EOI Solutions shall commence no later than ninety (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) License Commencement Date 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 Date shall mean the date Philips makes the EOI Solution available for use to Customer upon completion of installation of such licensed software on the Customer Provided Hardware.

3.2 Customer shall pay such invoices per the payment terms of the Agreement. Philips reserves the right to adjust customer list pricing and (or) net pricing, during the Term of the agreement, in accordance with the Consumer Price Index published by the United States Department of Labor in its website at <http://www.bls.gov/cpi>. Such adjustment in pricing requires thirty (30) day written notice, will not be retroactive, cannot start before first year of contract and will not exceed more than five percent (5%) change annually.

#### **4. Pricing Harmonization.**

4.1 In an effort to simplify and harmonize Philips product portfolio pricing structure, Philips may, no more than once during the term of the agreement, unilaterally adjust the price list and discount schedule for products under this Agreement, with no impact to the current net price.

4.2 Philips will:

4.2.1 Provide 30 days' written notice prior to fixing the net price of the product(s) sold under the agreement for 12 months (the "Lock Period") at the net price (the "Lock Price") of the product(s) in effect at the time of Customer's receipt of the written notice.

4.2.2 Provide an updated agreement price file showing the new list price and new discount, which together will not change the Lock Price set at the beginning of the Lock Period.

4.3 Upon termination of the Lock Period, the net price of the product(s) will be maintained in the manner defined in the agreement.

#### **5. Philips Ownership in the EOI Software Solutions.**

5.1 The Licenses granted under these Philips Additional Terms and Conditions of Sale for all EOI Software Solutions offered under Sections 2.1.2-2.1.3 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. Except for the licenses set forth in this exhibit for the term (under options offered per subsections 2.1.2-2.1.3), Philips retains all rights, title, and interest to all intellectual property in or arising from the Licensed Software.

#### **6. Statement of Work for all EOI Software Solutions Subscription & Data Usage.**

6.1 A Statement of Work identifying the License criteria (as indicated above in Section 2.1.5), Customer's & 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 the 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 6. 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.

6.2 In the case of PerformanceBridge, a 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 the 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.

**7. Customer Provided Hardware/Customer Managed IT Support Structure.**

- 7.1 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 & 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.
- 7.2 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.

## Schedule 9-A

### Annual Maintenance and Support for the EOI Software Solutions

#### **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 twenty-four hours per day, seven days per week including Philips recognized holidays.
- 1.2 **Remote Access & 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 a.m. to 5:00 p.m. 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 ninety (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 the 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 new software versions and updates of software for the licensed EOI Solution applications originally purchased by Customer. 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 is not included. Hardware updates and replacement are not included.
  - 3.1.1 **Functionality.** Customer is entitled to updates and upgrades for the EOI Software Solution applications Philips makes generally commercially available to customers having maintenance and support on the same EOI Solution application with the same software version and purchased options, original purchased by Customer, except for professional services fee with respect to upgrades. Customer acknowledges that certain functionality in current and previous software versions may not be available in future new software versions.
  - 3.1.2 **Hardware updates and replacement.** Software versions, updates and fixes may require hardware updates or replacement. 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.
- 3.2 To receive a new software version:
  - 3.2.1 Customer must be in compliance with all terms and conditions of this Schedule and the Philips standard terms and 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 version or update must meet the specifications of the new software version. Customer shall provide the EOI Software Solution hardware or software necessary to meet such specifications.  
 \*\*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 the 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 the 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.