

GENERAL CUSTOMER SERVICE TERMS AND CONDITIONS (Rev 24)

1. Services.

- 1.1** The services ("**Service(s)**") included in the quotation and/or Attachment A, as applicable (the "Quotation") will be provided by the Philips Entity ("Philips") entering into this Customer Service Agreement with Customer as identified in the Quotation. Philips will provide the Services to Customer for the equipment and software listed in the Quotation (the "Equipment") that is at the location in the Quotation (the "Site"), and certain Service deliverables will be provided for the exclusive benefit of the Site, under the terms and conditions described herein, including the Quotation, any exhibits and attachments, each of which are hereby incorporated (collectively, the "Agreement").

2. Access to Equipment.

- 2.1** Customer shall make the Equipment available to Philips at a mutually agreed date and time. If the Equipment is not available at the agreed upon time, Philips or Customer may attempt to reschedule the Service or cancel the Service. Philips may charge Customer at the then-current demand service rates for all time spent by Philips service personnel waiting for access to the Equipment.

3. Price.

- 3.1** In consideration for the Services to be performed by Philips, Customer shall pay the prices defined in the Quotation (the "Contract Price").
- 3.2** The Contract Price is a gross amount but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax. If the transactions as described in the Agreement are subject to any applicable VAT, sales tax, consumption tax or any other similar tax, Philips will charge VAT, sales tax, consumption tax or any other similar tax to Customer, which will be paid by Customer in addition to the Contract Price. Customer shall provide Philips with an appropriate exemption certificate in advance of the date the Service is invoiced, or Customer shall pay all taxes per Philips' invoice.
- 3.3** Contract Prices are based on the price levels at the effective date of the Agreement. Except as otherwise provided on the Quotation, Philips reserves the right to adjust customer list pricing and (or) net pricing, during the term of the Agreement set forth in the Quotation and incorporated herein ("Term"). 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. Price adjustments shall be in accordance with:
- 3.3.1** For customers in the United States, the Consumer Price Index published by the United States Bureau of Labor Statistics on its website at <http://www.bls.gov/cpi>.
- 3.3.2** For customers in Canada, the Consumer Price Index published by Statistics Canada on its website at https://www.statcan.gc.ca/en/subjects-start/prices_and_price_indexes/consumer_price_indexes.
- 3.4** Customer shall notify Philips and Philips shall be entitled to change the Contract Price in the event that:
- 3.4.1** the location of the Equipment changes;
- 3.4.2** any ambient conditions of operation (e.g., installation or de-installation of air-conditioning system) of the Equipment at the location change;
- 3.4.3** any additional equipment is acquired by the end-user which should be added to the inventory list of Equipment;
- 3.4.4** the Equipment is (partly) removed or taken out of service by Customer; and/or
- 3.4.5** the incoming main power supply and protective earth configuration changes, becomes unreliable, or is no longer in accordance with the Equipment specifications.
- 3.5** List Price Harmonization. In an effort to simplify and harmonize Philips services and/or products portfolio pricing structure Philips may, no more than once during the term of the Agreement, unilaterally adjust the price list and discount schedule for services and/or products under this Agreement, with no impact to the current net price. Philips will:
- 3.5.1** Provide thirty (30) days' written notice prior to fixing the net price of the service(s) and/or product(s) sold under this Agreement for twelve (12) months (the "Lock Period") at the net price

(the "Lock Price") of the service(s) and/or product(s) in effect at the time of Customer's receipt of the written notice.

3.5.2 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.

3.5.3 Upon termination of the Lock Period, the net price of the service(s) and/or product(s) will be maintained in the manner defined in the Agreement.

4. Payment.

4.1 Customer shall pay the Contract Price to Philips within thirty (30) days from the date of invoice in accordance with the instructions on the invoice.

4.2 Customer shall make any payments under this Agreement without any set-off, withholdings, or any other deductions.

4.3 Payments may be made by check, ACH, or wire. Philips does not accept transaction fees for wire transfers or any other payment method; Philips imposes a surcharge on credit cards of two percent (2%), which is not greater than Philips' cost of acceptance. All check payments over \$50,000 USD or CAD must be paid via eCheck or via Philips prepaid FedEx account with tracking to secure against fraud and misappropriation.

4.4 Customer shall pay interest on any amount not paid when due at the annual rate of twelve percent (12%) in the case of the U.S., which may be billed on a monthly basis or at the maximum rate permitted by applicable law for Canada.

4.5 If the Term of the Agreement is greater than one (1) year in duration, and Customer provides Philips a purchase order (PO) for a period of time less than the Term, then Customer will promptly provide Philips updated POs to fulfill the entire Term.

4.6 If Customer fails to pay any amount when due, Philips may, in addition to other rights it may have under this Agreement or by law, at its option:

4.6.1 withhold or suspend performance under the Agreement until all payments from Customer have been received by Philips;

4.6.2 deduct the unpaid amount from any amounts otherwise owed to Customer under any agreement by Philips or any of Philips' Affiliates (meaning any entity that directly or indirectly controls, is controlled by, or is under common control with Philips ("control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity));

4.6.3 declare all sums outstanding to become immediately due and payable under the Agreement;

4.6.4 commence collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, and reasonable attorneys' fees; and/or

4.6.5 if Customer does not cure its payment failure in accordance with Section 18.5.1, terminate this Agreement with ten (10) days' notice to Customer.

4.7 If Customer has contracted with a third-party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization, or the like ("Third-Party Organization") for purposes of centralized billing and management of Services provided to Customer, at Customer's written request, Philips will route invoices for payment of Services rendered by Philips to such Third-Party Organization and accept payment from them on Customer's behalf. Notwithstanding the above, the Services provided by Philips are subject solely to the terms and conditions set forth in this Agreement. Customer guarantees the payment of all monies due or that may become due under this Agreement in spite of any collateral arrangements Customer may have with such Third-Party Organization or any payments Customer has made to the Third-Party Organization. Philips has no contractual relationship for the Services rendered to Customer except as set forth herein. To the extent that the parts and Services Philips provides are not covered by Customer's arrangement with such Third-Party Organization, Customer shall promptly pay for such parts and Services on demand.

5. Exclusions.

The Services do not include, unless specifically agreed otherwise in the Quotation:

5.1 servicing or replacing components of equipment other than those Equipment or components listed in the Quotation that is at the Site;

- 5.2 servicing Equipment if contaminated with blood or other potentially infectious substances, disposing hazardous, infectious, or biomedical waste or material;
- 5.3 service specifically excluded in the Quotation;
- 5.4 any service necessary due to:
 - 5.4.1 a design, specification or instruction provided by Customer or Customer representative;
 - 5.4.2 the failure of anyone to comply with Philips' written instructions or recommendations;
 - 5.4.3 any combining of the Equipment with other manufacturers' product or software other than those recommended by Philips;
 - 5.4.4 any alteration or improper storage, handling, use, or maintenance of the Equipment, including any components, e.g., detectors, transducer, or coils, by anyone other than Philips' subcontractor or Philips;
 - 5.4.5 damage caused by an external source, regardless of nature;
 - 5.4.6 any removal or relocation of the Equipment; or (vii) neglect or misuse of, or accident with, the Equipment, including any components, e.g., detectors, transducer, or coils;
- 5.5 any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors, or explicitly excluded in the Quotation;
- 5.6 providing or paying the cost of any rigging, facility, structural alteration, or accessory incident;
- 5.7 the cost of consumables, accessories, and auxiliaries, including but not limited to: batteries of any type, light bulbs, power cords/AC adapters, headlight cables, EKG cables, SPO2 sensors, BP hose/cuff, temperature probes, extension/trunk/adaptor cables, foot pedals, hand pieces, probes, nerve stimulator cables, defibrillator cables/paddles/test plugs, laser tubes, patient pads, PET calibration sources, film, cassettes, filters, catheters and/or wires, etc., as well as any item that hangs off of, or plugs into, a device, unless specifically included in the Agreement;
- 5.8 cosmetic repairs;
- 5.9 the cost of factory reconditioning or rebuilds;
- 5.10 providing any updates or upgrades other than field safety corrective actions (i.e., safety related updates); and
- 5.11 maintenance or repair, including the cost thereof, of non-Philips manufactured products, unless specified otherwise in this Agreement.

6. **Customer Responsibilities.**

During the Term of this Agreement, Customer shall:

- 6.1 Comply with all applicable laws, rules, and regulations; Customer's obligations do not depend on any other obligations it may have under any other agreement or arrangement with Philips. Customer shall not exercise any offset right in the Quotation or sale in relation to any other agreement or arrangement with Philips;
- 6.2 Report immediately to Philips, and reasonably cooperate with Philips in investigating, any event of which Customer becomes aware that suggests that any Services or products provided by Philips, for any reason:
 - 6.2.1 may have caused or contributed to a death or serious injury, or
 - 6.2.2 have malfunctioned where and such malfunctions would be likely to cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Philips complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels, or instructions for use of the Services or products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Services or products provided by Philips hereunder, unless otherwise required by law.
- 6.3 ensure that the Site is maintained in a clean and sanitary condition, and that the Equipment, product, and/or part is decontaminated prior to service, shipping, or trade-in as per the instructions in the user manual;
- 6.4 ensure the proper removal and disposal of any hazardous material;
- 6.5 maintain operating environment within Philips specifications for the Site (including temperature and humidity control, incoming power quality, incoming water quality, and fire protection system);
- 6.6 use the Equipment in accordance with the published manufacturer's operating instructions;

- 6.7 make normal operator adjustments to the Equipment as specified in the published manufacturer's operating instructions;
- 6.8 provide Philips with broadband internet Wi-Fi access for business purposes;
- 6.9 in order for Philips to provide remote servicing of the Equipment, provide Philips, at each Site, with a dedicated high speed broadband internet connection suitable to establish a remote connection to the Equipment and facilitate the realization of the required remote infrastructure, by:
 - 6.9.1 supporting the remote connectivity with of a router or firewall or equivalent compatible service that complies with IPSec standards (router can be Customer owned or provided by Philips) for connection to the Equipment and Customer network; if the service device is provided by Philips, it remains Philips property and is only provided during the term of this Agreement;
 - 6.9.2 maintaining a secure location for hardware to connect Equipment to the Philips Remote Service Data Center (PRSDC);
 - 6.9.3 allowing Philips to connect to Customer's connected Equipment for the purpose of servicing the Equipment;
 - 6.9.4 providing and maintaining a free IP address within the Site network to be used to connect the Equipment to Customer's network;
 - 6.9.5 supporting the installation of service tools (as stipulated in Section 11) for connection to the Equipment and Customer network and by maintaining such connectivity to enable remote servicing as well as (automatic) downloads and installs of (security) updates of the service tools;
 - 6.9.6 maintaining the established connection throughout the Term (including restraining from any temporary disconnection or disabling of such connection (e.g., by switching of the host computer of the MRI Equipment)); and
 - 6.9.7 facilitating the reconnection by Philips in case of any temporary disconnection occurs;
- 6.10 If Customer fails to provide the access described in Section 6.9 and so the Equipment and/or the service tools are not connected to the PRSDC (including any temporary disconnection) and/or (security) updates are not downloaded and installed on the service tools, Customer waives its rights to Services under this Agreement and any uptime guarantee and shall be responsible for any damage due to such failure;
- 6.11 provide Philips and its subcontractor's service personnel with full and free access to the Equipment at the scheduled service time;
- 6.12 if applicable, provide invitation letters and support visa application and travel requirements in case necessary; and
- 6.13 timely return defective spare parts to Philips in accordance with the terms of this Agreement; and ensure that all staff working on the Equipment covered under this Agreement are trained and qualified in accordance with all applicable laws and good industry practice.

7. Warranty Disclaimer.

- 7.1 Philips' sole service obligations to Customer are described in this Agreement. All labor, including technical support, shall be performed in a good and workmanlike manner, subject to applicable Terms of Service, including any exclusions. Philips provides no additional warranties under this Agreement. All Services and parts provided under this Agreement are provided "as is". PHILIPS SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

8. Limitations of Liability.

- 8.1 THE TOTAL LIABILITY OF PHILIPS ARISING UNDER OR IN CONNECTION WITH THE PARTS AND SERVICES FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS, WARRANTY, TORT (INCLUDING NEGLIGENCE), UNLAWFUL ACT, OR OTHERWISE IN CONNECTION WITH THE SERVICE IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED FOR THE SERVICE THAT GAVE RISE TO THE CLAIM.
- 8.2 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 SERVICE, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT AND WHETHER THE CLAIM IS MADE IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, INDEMNITY, 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 EQUIPMENT.

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

8.4 THE FOLLOWING ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY UNDER SECTION 8.1:

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

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

8.4.3 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 OR PERSONAL HEALTH INFORMATION.

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

9. Intellectual Property Indemnification.

9.1 Philips shall indemnify, defend, and hold harmless Customer against any claim that Services, including any software, part, or service materials provided under this Agreement (collectively "Service Item(s)"), infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, provided that Customer: (a) provides Philips prompt written notice of the claim and (b) grants Philips full and complete information and assistance necessary for Philips to defend, settle, or avoid the claim.

9.2 If a Service Item is found or believed by Philips to infringe a valid patent or copyright; Customer has been enjoined from using a repaired product or Service Item pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option:

9.2.1 procure the right for Customer to use the Service Item(s);

9.2.2 replace or modify the Service Item(s) to avoid infringement; or

9.2.3 refund to Customer a portion of the service fees upon the return of the Service Item(s) that are subject of such claims of infringement. Philips shall have no obligation for any claim of infringement arising from: Philips' compliance with Customer's designs, specifications, or instructions; Philips' use of technical information or technology supplied by Customer; modifications to the Service Item(s), which are not permissible hereunder; use of the covered Philips product (based on Service Item(s) delivered under this Agreement) other than in accordance with the product specifications or applicable written instructions; use of the covered Philips product, including with Service Item(s), with any other product not sold by Philips to Customer and the Philips product (including Service Items) in and of itself is not infringing; if claims of infringement would have been avoided by the use of a current unaltered release of covered Philips products, provided that, Philips makes such unaltered release available to Customer at no additional charge for use of the Philips Product (including with Service Items) after Philips has advised Customer, in writing, to stop use of the Philips Product in view of the claimed infringement (provided that this shall not be a replacement for the remedies set forth in 9.2 (1)-(3) above). The terms in this section 9.2 state Philips' entire obligation and liability for claims of infringement and Customer's sole remedy in the event of a claim of infringement.

10. End of Life.

10.1 AFTER THE END OF LIFE DATE, PHILIPS WILL CONTINUE TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR EQUIPMENT, BASED ON PARTS AND TRAINED ENGINEER AVAILABILITY, BUT WITH NO UPTIME GUARANTEE. AFTER THE END OF LIFE DATE, PHILIPS WILL NOT CREATE OR TEST BUG FIXES, PATCHES, OR ENHANCEMENTS TO THE EQUIPMENT HARDWARE OR SOFTWARE.

10.2 If Philips determines that its ability to provide the Services is hindered due to the unavailability of parts or trained personnel, or that the Equipment can no longer be maintained in a safe or effective manner, as determined by Philips, then Philips may terminate this Agreement with respect to such Equipment upon

notice to Customer and provide Customer with a refund of any Customer pre-payments for periods of Service coverage not already completed.

11. Proprietary Service Materials.

11.1 In connection with the Services, Philips may deliver or transmit to the Site certain proprietary service materials (including software, tools, and written documentation) that have not been purchased by or licensed to Customer. The presence of this property within the Site will not give Customer any right or title to this property or any license or other right to access, use, or decompile this property. Customer hereby consents to this delivery, storage, attachment, installation, and use of such proprietary service materials, and Customer consents to the presence of a Philips' locked cabinet or box at the Site for storage of this property and to Philips' removal of all or any part of this property at any time, all without charge to Philips. Customer agrees to return any service tools that are no longer required on-site to Philips and to take responsibility for exportation, duties, fees, and transport cost, all in accordance with Philips' instructions; failure to do so entitles Philips to invoice Customer for the value of the respective tool. Customer will protect this property against damage or loss and to prevent any access to or use of this property by any unauthorized party and Customer will be liable for any violation thereof. Customer shall immediately report to Philips any violation of this provision.

12. Confidentiality.

12.1 Each party will maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing, visually, or orally, relating to the business of the disclosing party, its customers, or its patients, and this Agreement and its terms, including its pricing terms. Each party will use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but not less than reasonable care. Each party will disclose such information only to its employees, and in the case of Philips, its Affiliates and subcontractors having a need to know such information to perform the transactions contemplated by this Agreement. The obligation to maintain the confidentiality of such information will not extend to

12.1.1 information in the public domain at the time of disclosure,

12.1.2 information that is lawfully obtained by the receiving party from a third party without any breach of confidentiality or violation of law, or

12.1.3 information that is required to be disclosed by law or by court order. The confidentiality obligations herein will expire five (5) years after the Agreement terminates or expires. The disclosing party maintains exclusive ownership of the confidential information that it discloses to the receiving party, and the receiving party shall be responsible for the breach of these confidentiality terms by any of its representatives or other person to whom it may disclose the confidential information. Notwithstanding the foregoing, in the event a party is required by law or court order to disclose the other party's confidential information to a court, government department/agency, or regulatory body, to the extent permitted by applicable law, it shall first inform the other party of the request or requirement for disclosure to allow an opportunity for the other party to apply for an order to prohibit or restrict such disclosure. Moreover, nothing set forth herein shall prohibit Customer from disclosing confidential information required by state or federal open records laws, to the extent disclosed in compliance with the rules and procedures applicable thereto, including notifying Philips and providing Philips an opportunity to argue certain information may be exempt as a trade secret, if applicable thereunder. The party receiving the other party's confidential information agrees and acknowledges that any breach or threatened breach of these obligations of confidentiality may result in irreparable harm to the disclosing party for which there may be no adequate remedy at law. In addition to any other remedies, in such event the disclosing party may be entitled to seek an injunction, without the necessity of posting a bond, to prevent any further breach of this Agreement by the receiving party.

13. Compliance with Laws & Privacy.

13.1 If any provision of these Conditions of Service 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 Service, to the extent permitted by the applicable law,

shall be deemed to be a substitute for that provision. The failure by 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.

- 13.2** For customers in the United States, 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]).
- 13.3** To the extent applicable, Customer acknowledges it shall comply with all Medicare, Medicaid, or state cost reporting requirements, including discounts afforded to Customer under this Agreement, for any and Services or parts purchased hereunder. Omnibus Reconciliation Act (OMNI) Social Security (PL96-499, Public Law).
- 13.4** 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 Services or parts pursuant to these Terms and Conditions, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these General Customer Service Terms and Conditions and the books, documents, and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Terms and Conditions through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such Services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary, or upon request of the Comptroller General, or any of their duly authorized representatives the subcontract, and books, 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 Terms and Conditions. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.
- 13.5** Excluded Provider. As of the date of the sale of the Services, Philips represents and warrants that Philips, and its employees and subcontractors, are not debarred, excluded, suspended, or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for the Services and parts provided under these General Customer Service Terms and Conditions (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing Services hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer-related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the Parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for Services not yet rendered and parts not yet shipped prior to a date of exclusion.
- 13.6** To the extent applicable to your state, it is Customer's responsibility to notify Philips if any portion of the Quotation 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 Quotation is funded under ARRA on its purchase order or other document issued by Customer.

13.7 For those customers where Canadian Federal and/or Provincial privacy laws (“Canadian Privacy Laws”) apply, Philips and Customer will comply with Canadian Privacy Laws in fulfilling their respective obligations hereunder. Customer acknowledges that Philips may be required, in limited circumstances, to store or grant access to Personal Data to the original equipment manufacturer (OEM) or its Affiliates located outside of Canada. Unless otherwise permitted by law, such disclosure will be limited to exceptional circumstances where it is necessary for the purposes of installing, implementing, maintaining, repairing, trouble shooting, or upgrading the Equipment, or where data recovery assistance from the OEM is necessary. Where required by law, any such disclosure will be limited to temporary access and storage for the minimum time necessary for the purpose and only as required in order to meet the requirements of this Agreement. Customer acknowledges and agrees that Customer is responsible for obtaining all required consents and providing all required notices to individuals to allow Philips and its subcontractors to process Personal Data for the purposes set out herein.

14. Processing of Personal Data.

14.1 During provision of the Services, Philips and/or its Affiliates may process information, in any form, that may qualify as personal data, which is information relating to an individual from which that individual can be directly or indirectly identified. Philips and/or its Affiliates will:

14.1.1 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 Customer (the terms and conditions governing Philips’ handling, processing, storage, or use of PHI are set forth in the Business Associate Agreement or Addendum between the parties) and

14.1.2 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.

15. Use of Non-Personal Data.

15.1 Customer agrees that Philips and/or its Affiliates may use any data other than personal data generated by the Equipment 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 Philips 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.

16. Export Control.

16.1 The provision of Service may be subject to the granting of governmental export licenses. In the event that such licenses or an end-user statement are required, Philips will contact Customer immediately and Customer shall provide Philips with such documents on first request. In case the provision of the Services becomes restricted or forbidden due to changed export control laws, Philips may suspend or terminate, at its option, the execution of its obligations under this Agreement without incurring any liability toward Customer other than reimbursing any amounts received for Services not yet rendered.

17. Subcontracts and Assignments.

17.1 Philips may subcontract to service contractors of Philips’ choice any of Philips’ service obligations to Customer or other activities performed by Philips under this Agreement. No such subcontract will release Philips from those obligations to Customer. Philips may, without prior notice or consent, assign this Agreement to its parent corporation, any of its Affiliates, or to a successor entity in the event of a merger, consolidation, transfer, sale, stock purchase or public offering, as long as the party who receives the assignment assumes all of Philips’ obligations hereunder. Customer may not assign this Agreement or the responsibility for payments due under it without Philips’ prior express written consent, which will not be unreasonably withheld.

18. Term and Termination.

18.1 This Agreement is non-cancelable by Customer unless as expressly set forth in this Agreement and will remain in effect for the Term.

18.2 Either party may terminate this Agreement upon written notice in the event that the other party becomes or is deemed to be insolvent, discontinues business, is unable to pay its debts, is the subject of bankruptcy

proceedings, enters into liquidation whether compulsory or voluntarily or has a receiver or administrator appointed over all or any part of its assets, enters into any arrangement or agreement, or assignment with, or for the benefit of its creditors or any of them, or if the other party takes or suffers any similar action in consequence of debt or insolvency in any jurisdiction. If 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, Customer's financial obligations to Philips shall remain in full force and effect.

18.3 If Customer sells or otherwise transfers any of the Equipment to a third party and the Equipment remains installed and in use at the same location, and such third party assumes the obligations of Customer under this Agreement or enters into a new service agreement with Philips, the price will be equal to the price in this Agreement and a term at least equal to the unexpired/unused term of this Agreement. If such third party does not assume the obligations of Customer under this Agreement, then Customer may terminate this Agreement with respect to such Equipment upon no less than thirty (30) days' prior written notice to Philips, in which case Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages, and not as a penalty, an amount equal to thirty percent (30%) of the remaining payments due under this Agreement for such Equipment from the date of termination through the scheduled expiration of the term of this Agreement.

18.4 Customer may terminate, upon sixty (60) days' written notice to Philips:

18.4.1 the Service coverage for an individual piece of Equipment under this Agreement, representing that such Equipment is being permanently removed from the Site and is not being used in any other Site, or

18.4.2 the Agreement, specifically describing a material breach or default of this Agreement by Philips; provided, however, that Philips may avoid such termination by curing the condition of breach or default within such sixty (60)-day notice period.

18.5 Philips may terminate this Agreement, wholly or partially:

18.5.1 if Customer defaults in the performance of any of its obligations under this Agreement, and fails to remedy the same within sixty (60) days of a written notice, or

18.5.2 as described in Section 4 (Payment) and Section 10 (End of Life).

19. Independent Contractor.

19.1 Philips is Customer's independent contractor. Nothing in this Agreement shall be construed to designate Philips or Philips' employees or Philips' subcontractor or any of its employees as Customer employees, agents, or partners. 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' or other representatives' acts or omissions related to any services that are performed by Customer's employees or representatives under this Agreement.

20. Force Majeure.

20.1 Each party shall not be liable in respect of the non-performance of any of its obligations (except for payment obligations for Services rendered) 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. If force majeure prevents Philips from performing any obligation arising out of the sale, Philips shall not be liable to Customer for any compensation, reimbursement, or damages.

21. Third-Party Products Provided by Philips.

21.1 To the extent a third-party products service plan is explicitly identified in the Quotation, Philips shall be responsible for servicing third-party products provided by Philips. Otherwise, Philips is not responsible for servicing any third-party products provided by Philips to Customer.

22. Adulterated Systems.

22.1 If Philips determines that the Equipment has been modified or adulterated in a manner not explicitly specified in the documentation accompanying the Equipment, including without limitation by including a part, component, or device not specified as compatible (an “Adulterated System”), and such modification or adulteration hinders Philips’ ability to provide the Service or maintain the Equipment in a safe or effective manner, then Philips will promptly notify Customer of such Adulterated System. Following receipt of such notice, if Customer does not permit Philips (at Customer’s cost) to remediate the Adulterated System, then Philips may remove the Adulterated System from the Site list, adjust the Services under this Agreement, and provide Customer with a refund of any Customer pre-payments for periods of Service not yet rendered or parts not yet provided.

23. Insurance.

23.1 Upon Customer request, Philips will provide a Certificate of Philips insurance coverage.

24. Rules and Regulations.

24.1 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.

25. Miscellaneous.

25.1 Survival. Customer’s obligation to pay any money due to Philips hereunder survives expiration or termination of this Agreement. All of Philips’ rights, privileges, and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement.

25.2 Performance. The failure of Customer or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the Service and delivery of similar or dissimilar services shall not serve as references in interpreting the terms and conditions of this Agreement.

25.3 Counterparts. This Agreement may be executed in one or more counterpart copies, each of equal validity, that together constitute one and the same instrument. Any photocopy or facsimile of this Agreement or any such counterpart is deemed the equivalent of an original and any such facsimiles constitute evidence of the existence of this Agreement.

25.4 Governing Law. All transactions contemplated under this Agreement shall be governed by the laws of the state in which the Equipment is located, without regard to that state’s choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act (“UCITA”), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, IT’S SUCCESSORS’ AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

25.5 Amendment. Save and except for items where Philips has retained the right to unilaterally amend the terms of this Agreement, this Agreement may not be amended except by written instrument signed by both parties.

25.6 Communication. 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.

25.7 Choice of Language. This Agreement is drawn up in English pursuant to the formal request of parties. Cette entente a été rédigée en anglais à la demande expresse des deux parties.

25.8 Entire Agreement. This Agreement, including all applicable Exhibits as attached hereto, constitutes the entire understanding of the parties and supersedes all other agreements, written or oral, regarding its subject matter. No additional terms, conditions, consent, waiver, alteration, or modification will be binding unless in writing and signed by Philips’ authorized representative and Customer. Additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are expressly rejected and will not apply to the transactions contemplated by this Agreement. No prior proposals, statements, course of dealing, course of performance, usage of trade or industry standard will be part of this Agreement. For avoidance of doubt, a reference to “Imaging” or “Imaging Services” equals a reference to Services to Philips’ MRI, CT, AMI, DXR, Ultrasound, or IGT-Systems devices.

25.9 Additional Terms. Service-specific exhibits and any associated attachments are incorporated herein as they apply to the Services listed on the Quotation and their additional terms shall apply solely to Customer's purchase of the Services specified therein. If any terms expressly set forth in an exhibit conflict with terms set forth in these General Customer Service Terms and Conditions, the terms expressly set forth in the exhibit shall govern.

26. Authority to Execute.

26.1 The parties acknowledge that they have read the terms and conditions of this Agreement, that they know and understand the same, and that they have the express authority to execute this Agreement.