

**PHILIPS DS NORTH AMERICA, LLC  
SERVICE AGREEMENT TERMS AND CONDITIONS (REV R.1)**

**1. SERVICES PROVIDED**

- 1.1 The services listed in the quotation and/or Attachment A (the "Services") are offered by Philips DS North America, LLC ("Philips") only under the terms and conditions described below, and on the quotation and any exhibits and attachments hereto, each of which are hereby incorporated (the "Agreement").

**2. EXCLUSIONS**

- 2.1 The Services do not include:
- 2.1.1 Servicing or replacing components of the system other than those systems or components listed in the quote, attachments and exhibits, as applicable (the "Covered System") that is at the listed system location ("Site");
  - 2.1.2 Servicing the Covered System if contaminated with blood or other potentially infectious substances;
  - 2.1.3 Any service necessary due to:
    - 2.1.3.1 a design, specification, or instruction provided by Customer or Customer representative;
    - 2.1.3.2 the failure of anyone to comply with Philips' written instructions or recommendations;
    - 2.1.3.3 any combining of the Covered System with other manufacturer's product or software other than those recommended by Philips;
    - 2.1.3.4 any alteration or improper storage, handling, use, or maintenance of the Covered System by anyone other than Philips' subcontractor or Philips;
    - 2.1.3.5 damage caused by an external source, regardless of nature;
    - 2.1.3.6 any removal or relocation of the Covered System; or
    - 2.1.3.7 neglect or misuse of the Covered System;
  - 2.1.4 Any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors; or
  - 2.1.5 Any services or costs related to batteries, which are not included in coverage for any purpose, system, or modality, including, but not limited to, Biomedical Equipment, as defined herein, or Uninterruptible Power Supply (UPS) systems of any size or type.

**3. CUSTOMER RESPONSIBILITIES**

During the term of this Agreement, Customer will:

- 3.1. Ensure that the Site is maintained in a clean and sanitary condition and that the Covered System, product or part is decontaminated prior to service, shipping or trade-in as per the published manufacturer's operating instructions;
- 3.2. Dispose of hazardous or biological waste generated;
- 3.3. Maintain operating environment within Philips' specifications for the Site including temperature and humidity control, incoming power quality (including but not limited to voltage spikes, brownouts, and outages), incoming water quality, and fire protection system; and
  - 3.3.1. For customers choosing not to use a Philips approved UPS, Philips reserves the right to insert a power monitor at any time during the contracted period to collect power quality statistics. Should results show that power quality negatively impacted system performance and resulted in additional Philips cost to maintain the system, Philips reserves the right to bill for service events related to poor power quality.
- 3.4. Use the Covered System in accordance with the published manufacturer's operating instructions.

**4. SYSTEM AND BIOMEDICAL EQUIPMENT AVAILABILITY**

- 4.1 System Availability. If Customer schedules service and the Covered System is not available at the agreed upon time, then Philips may cancel the service or charge Customer at Philips' then current labor and travel rates for all time spent by Philips service personnel waiting for access to the Covered System.
- 4.2 Biomedical Equipment Availability. In order to achieve contracted Planned Maintenance (PM) compliance, Customer agrees to make the Biomedical Equipment available for PM service during normal business hours (Monday through Friday, 8 AM to 5 PM, excluding Philips recognized holidays) starting fourteen (14) days before the month in which PMs are due and ending on the last day of the actual month in which PMs are due. If the Biomedical Equipment is unavailable during the month in which PMs are due, and this results in Philips having to perform service of more than twenty-five percent (25%) of the PM volume in the last week of the month that PMs are due, Philips will charge Customer at Philips' then current labor rates (and travel, if required) for all overtime incurred as a result of the Biomedical Equipment not being available. For the purposes of this Agreement, Biomedical Equipment means clinical equipment that is mobile and not in a fixed location. Biomedical Equipment does not include diagnostic imaging equipment that is non-mobile. This subsection 4.2 does not apply to services provided under Exhibits 9 (Clinical Informatics Service Agreements), 9-A (Clinical Informatics Service Agreements for Interoperability Platform), and 10 (Clinical Informatics Hardware Support Coverage).

**5. PAYMENT**

- 5.1 All payments under this Agreement are due thirty (30) days from the date of Philips' invoice.
  - 5.1.1 Customer will pay interest on any amount not paid when due at the lesser of one percent (1%) interest per month or the maximum rate permitted by applicable law.
  - 5.1.2 Payments may be made by check, ACH, or wire. Philips does not accept transaction fees for wire transfers.
  - 5.1.3 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 Customer's elected payment method.

## **6. FORCE MAJEURE**

- 6.1. Each party shall be excused from performing its obligations (except for payment obligations for Services rendered) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, health pandemics, acts of any civil, military or government authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any government act, regulation, or mandatory direction or request. For clarity, Customer requests shall not be considered 'government' requests under this section.

## **7. TERM AND TERMINATION**

- 7.1. The term of this Agreement shall be set forth in the quote(s) and/or Attachment A attached hereto and incorporated herein ("Term").
- 7.2. This Agreement is non-cancelable by Customer and will remain in effect for the Term specified in this Agreement. However, Customer may cancel service coverage for an individual Covered System under this Agreement upon sixty (60) days' written notice to Philips representing that the Covered System is being permanently removed from the Site and that the Covered System is not being used in any other Customer site.
- 7.3. Upon sixty (60) days' written notice to Philips, Customer may cancel this Agreement specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such sixty (60) day notice period. Termination under this clause shall not impact fees paid for Services rendered up to the time of such material breach, which shall remain payable to Philips.
- 7.4. In addition, if the Customer sells or otherwise transfers any of the Covered System to a third party and the System remains installed and in use at the same location, and such third party assumes the obligations of the 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 the Customer under this Agreement, then the Customer may terminate this Agreement with respect to such Covered System upon no less than thirty (30) days' prior written notice to Philips, in which case the Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to thirty percent (30%) of the remaining payments due under this Agreement for such Covered System from the date of termination through the scheduled expiration of the term of this Agreement.
- 7.5. If this Agreement includes a Pool and terminates for any reason and Customer has expended more funds from its Pool than it has contributed to the Pool, then Customer shall pay Philips the amount by which its expenditures exceeded its contributions within five (5) business days of such termination.
- 7.6. Clinical Education training and credits will expire upon termination of the Agreement.

## **8. DEFAULT**

- 8.1 Customer's failure to pay any undisputed amount due under this Agreement within thirty (30) days of when payment is due constitutes a default of this Agreement and all other agreements between Customer and Philips. In such an event, Philips may, at its option, (i) withhold performance under this Agreement and any or all of the other agreements until a reasonable time after all defaults have been cured; (ii) declare all sums due; (iii) commence collection activities for all sums due or that become due hereunder, including, but not limited to, costs and expenses of collection and reasonable attorney's fees; (iv) terminate this Agreement with ten (10) days' notice to Customer; and (v) pursue any other remedies permitted by law.

## **9. ADULTERATED SYSTEMS**

- 9.1 If Philips determines that a Covered System has been modified or adulterated in a manner not explicitly specified in the documentation accompanying the Covered System, 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 Covered System 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.

## **10. END OF LIFE**

- 10.1 AFTER THE END OF LIFE DATE, PHILIPS WILL CONTINUE TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR SYSTEMS, 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 SYSTEM 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 Covered System 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 Covered System upon notice to Customer and provide Customer with a refund of any Customer pre-payments for periods of Service coverage not already completed.

## **11. WARRANTY DISCLAIMER**

- 11.1 All labor shall be performed in a good and workmanlike manner consistent with industry practices by personnel with training. Philips' full contractual service obligations to Customer are described in this Agreement, including all exhibits attached hereto that apply to the specific Services offering and coverage purchased under the Agreement. In the event of a material breach of the foregoing, Customer shall provide Philips written notice and an opportunity to cure per the termination section of this Agreement. Except as otherwise provided in this Agreement, Philips provides no additional warranties express or implied under this Agreement. NO WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE APPLIES TO SERVICES OR SERVICE ITEMS PROVIDED BY PHILIPS UNDER THIS AGREEMENT.

## **12. INTELLECTUAL PROPERTY INDEMNIFICATION**

- 12.1 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.
- 12.2 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: (i) procure the right for Customer to use the Service Item(s); (ii) replace or modify the Service Item(s) to avoid infringement; or (iii) 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 12.2 (i)-(iii) above). The terms in this section 12.2 state Philips' entire obligation and liability for claims of infringement and Customer's sole remedy in the event of a claim of infringement.

## **13. LIMITATIONS OF LIABILITY AND DISCLAIMER**

- 13.1 THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING FROM OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM THE SERVICES OR PHILIPS' PERFORMANCE OF THE SERVICES, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE STATED IN THIS AGREEMENT FOR THE SERVICE GIVING RISE TO THE LIABILITY. THIS LIMITATION SHALL NOT APPLY TO:
- 13.1.1 THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE;
- 13.1.2 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;
- 13.1.3 OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI, AS DEFINED BY HIPAA;
- 13.1.4 FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY; ANY SUCH FINES OR PENALTIES CONSTITUTING DIRECT DAMAGES; and
- 13.1.5 PHILIPS' INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 12 ABOVE.
- 13.2 IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY, OR OTHER TORT.

## **14. PROPRIETARY SERVICE MATERIALS**

- 14.1 Philips may deliver or transmit certain proprietary service materials (including software, tools and written documentation intended solely to assist Philips and its authorized agents in performing Services under this Agreement) ("Proprietary Service Materials") 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 agrees to restrict access to such software, tools, and written documentation to Philips' employees and authorized agents only, and to permit Philips to remove its Proprietary Service Materials upon request. Customer will use all reasonable efforts to protect this property against damage or loss and to prevent any access to or use of this property by any unauthorized party. Customer shall immediately report to Philips any violation of this section.

## **15. THIRD-PARTY MANAGEMENT**

- 15.1 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.

## **16. TAXES AND PRICE**

- 16.1 The price stated in the quotation does not include applicable sales, excise, use, or other taxes in effect or later levied. Customer shall provide Philips with an appropriate exemption certificate reasonably in advance of the effective date, otherwise, Philips shall invoice Customer for those taxes and Customer shall pay those taxes in accordance with the terms of the invoice.
- 16.2 Price Indexation. 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.

## **17. INDEPENDENT CONTRACTOR**

- 17.1 Philips is Customer's independent contractor, not Customer's employee, agent, joint venturer, 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' acts or omissions related to any services that are performed by Customer employees under this agreement. Only Philips or its employees may authorize a third party to perform Services or obligations required of Philips under this Agreement on its behalf. Neither party has the authority to bind the other party in any promise, agreement, or representations other than as expressly provided for in this Agreement

## **18. RECORD RETENTION AND ACCESS**

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

## **19. COMPLIANCE**

- 19.1 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 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 Act of 1972 as amended), E-Verify, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Health care providers are reminded that if this Agreement includes a discount, 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]).
- 19.2 Business Associate Agreements (BAA). The most current BAA duly executed between Philips and Customer in effect at the time of Philips performance of the Services shall apply and is incorporated into this Agreement. In the event terms that explicitly govern the handling, processing, storage, disclosure, or use of PHI expressly set forth in the BAA conflict with terms set forth in this Agreement, the terms set forth in the BAA shall govern in such instance. Otherwise, the terms expressly set forth herein shall apply.
- 19.3 In the course of providing the Services to Customer hereunder, it may be necessary for Philips to have access to, view, and/or download computer files from the Covered System that might contain Personal Data. "Personal Data" includes information relating to an individual from which that individual can be directly or indirectly identified. Personal Data can include personal health information (e.g., images, heart monitor data, and medical record number) and non-health personal information (e.g., date of birth, gender). Philips will process Personal Data only to the extent necessary to perform and/or fulfill its Service obligations under this Agreement. Customer further acknowledges and agrees that all telephone conversations between Philips and Customer may, at Philips' discretion, be recorded.

## **20. CONFIDENTIALITY**

- 20.1 Each party shall 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, employees, and/or its patients, the quotation and this Agreement and its terms, including its pricing terms. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement.

The disclosing party maintains exclusive ownership of the confidential information which it discloses to the receiving party, and a receiving party shall be responsible for the breach of these confidentiality terms by any of its representatives or other person to whom it may disclose the confidential information. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of this Agreement or any other obligation of confidentiality or (b) is lawfully obtained by the receiving party from a third party without any breach of confidentiality or violation of law. Notwithstanding the foregoing, in the event that the receiving party is required by law to disclose any confidential information to a court, government department/agency, or regulatory body, the receiving party may so disclose, provided that it shall, to the extent permitted by applicable law, first inform the disclosing party of the request or requirement for disclosure to allow an opportunity for the disclosing party to apply for an order to prohibit or restrict such disclosure. Moreover, nothing set forth herein shall prohibit Customer from disclosing confidential information required by state or federal open records laws, to the extent disclosed in compliance with the rules and procedures applicable thereto, including notifying Philips and providing Philips an opportunity to argue certain information may be exempt as a trade secret, if applicable thereunder.

## **21. SUBCONTRACTS AND ASSIGNMENTS**

- 21.1 Philips may subcontract to third parties of Philips' choice any of Philips' obligations under this Agreement. No such subcontract will release Philips from those obligations to Customer. Customer may not assign this Agreement or the responsibility for payments due under it without Philips' prior express written consent, which will not be unreasonably withheld.

## **22. INSURANCE**

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

## **23. RULES AND REGULATIONS**

- 23.1 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.

## **24. EXCLUDED PROVIDER**

- 24.1 As of the Effective Date of this Agreement, Philips represents and warrants that Philips, its employees, and subcontractors, are not debarred, excluded, suspended, or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for the products and Services provided under this Agreement (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors, providing the Services 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, 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 Agreement by express written notice for Services not yet rendered prior to the date of exclusion.

## **25. GENERAL TERMS**

- 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 Severability. If any provision of the Agreement is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired and shall continue in full force and effect.
- 25.4 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.
- 25.5 Governing Law. All transactions contemplated under this Agreement shall be governed by the laws of the state in which the Covered System 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.
- 25.6 Entire Agreement. This Agreement constitutes the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and/or Attachment A, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation and/or Attachment A. No additional terms, conditions, consents, waivers, alterations, or modifications will be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and will not apply to the transactions contemplated by this Agreement.
- 25.7 Additional Terms. Service specific exhibits and any associated attachments are incorporated herein as they apply to the Services listed on the quotation and/or Attachment A and their additional terms shall apply solely to Customer's purchase of

the Services specified therein. If any terms set forth in an exhibit conflict with terms set forth in these Terms and Conditions of Service, the terms set forth in the exhibit shall govern.

**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.