



**PHILIPS HEALTHCARE  
SERVICE AGREEMENT TERMS AND CONDITIONS (REV Q.1)**

**1. SERVICES PROVIDED**

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

**2. EXCLUSIONS**

The Services do not include:

- 2.1.** Servicing or replacing components of the system other than those systems or components listed in the quote, attachments and exhibits, as applicable (the "Covered System") that is at the listed system location ("Site");
- 2.2.** Servicing Covered System if contaminated with blood or other potentially infectious substances;
- 2.3.** Any service necessary due to: (i) a design, specification or instruction provided by Customer or Customer representative; (ii) the failure of anyone to comply with Philips' written instructions or recommendations; (iii) any combining of the Covered System with other manufacturers product or software other than those recommended by Philips; (iv) any alteration or improper storage, handling, use or maintenance of the Covered System by anyone other than Philips' subcontractor or Philips; (v) damage caused by an external source, regardless of nature; (vi) any removal or relocation of the Covered System; or (vii) neglect or misuse of the Covered System;
- 2.4.** Any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors.
- 2.5.** Batteries are not included in coverage for any purpose, system, or modality, including, but not limited to, Biomedical Equipment 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;
  - 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 the Customer at Philips then current labor and travel rate 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, 8am to 5pm, excluding Philips recognized holidays) starting 2 weeks before the month in which PM's 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 PM's are due and this results in Philips having to perform service of more than 25% of the PM volume due that month, in the last week of the month that PM's are due, Philips will charge the 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. It does not include diagnostic imaging equipment that is non-mobile. In addition, this subsection 4.2 do not apply to services provided under Exhibits 9, 9-A and 10.

## **5. PAYMENT**

**5.1** All payments under this Agreement are due thirty (30) days from the date of Philips' invoice until the Agreement amount and all applicable taxes and interest are paid in full.

**5.1.1** Customer will pay interest on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law.

**5.1.2** Payment Methods. 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) 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, 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 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 and to (iii) commence collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, and reasonable attorney's fees, (iv) terminate this Agreement with ten (10) days' notice to Customer, and (v) pursue any other remedies permitted by law.

## **9. END OF LIFE**

**9.1.** 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.

- 9.2. If Philips determines that its ability to provide the service coverage is hindered due to the unavailability of parts or trained personnel, or that the 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 the Customer and provide Customer with a refund of any Customer pre-payments for periods of service coverage not already completed.

#### **10. WARRANTY DISCLAIMER**

- 10.1 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. Moreover, all labor shall be performed in a good and workmanlike manner consistent with industry practices by personnel with training. 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 provide in this Agreement, Philips provides no additional warranties express or implied under this Agreement. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO SERVICES OR SERVICE ITEMS PROVIDED BY PHILIPS' UNDER THIS AGREEMENT.

#### **11. INTELLECTUAL PROPERTY INDEMNIFICATION**

- 11.1 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 Items"), 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; (b) grants Philips full and complete information and assistance necessary for Philips to defend, settle, or avoid the claim.
- 11.2 If (a) a Service Item is found or believed by Philips to infringe a valid patent or copyright; or, (b) 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 Service Items; (ii) replace or modify the Service Items to avoid infringement; or (iii) refund to Customer a portion of the service fees upon the return of Service Items 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 Philips Service Items, which is not permissible hereunder; use of the covered Philips product (based Service Items delivered under this Agreement other than in accordance with the product specifications or applicable written product instructions for such Service Items or covered products; use of the covered Philips product, including with Service Items 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 infringement would have been avoided by the use of a current unaltered release of a 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 11.2(i)-(iii) above. The terms in this section 11.2 state Philips' entire obligation and liability for claims of infringement, and Customer's sole remedy in the event of a claim of infringement.

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

- 12.1 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:
- 12.1.1 THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE;
- 12.1.2 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;
- 12.1.3 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; and,
- 12.1.4 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.
- 12.1.5 PHILIPS INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 ABOVE.

**12.2** 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.

**13. PROPRIETARY SERVICE MATERIALS**

**13.1** 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 those of Philips' 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.

**14. THIRD PARTY MANAGEMENT**

**14.1** 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.

**15. TAXES**

**15.1** 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. INDEPENDENT CONTRACTOR**

**16.1** 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. 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

**17. RECORD RETENTION AND ACCESS**

**17.1** 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 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.

## **18. COMPLIANCE**

- 18.1** 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]).
- 18.2** Business Associate Addendums/Agreements between Philips and Customer. Customers most current business associate agreement ("BAA") duly executed with Philips and in effect at the time of Philips performance of the services shall apply and is incorporated into this Agreement. In the event terms 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.
- 18.3** 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"). Personal Data means information about an identifiable individual and includes any information that is "personal information" or "personal health information" within the meaning of any applicable privacy law. Personal Data can include both personal health information (i.e. images, heart monitor data, and medical record number) and non-health information (i.e., 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, in Philips discretion, be recorded.

## **19. CONFIDENTIALITY**

- 19.1** Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, 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 these Terms and Conditions of Service 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.

## **20. SUBCONTRACTS AND ASSIGNMENTS**

- 20.1** 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. 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.

**21. INSURANCE**

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

**22. RULES AND REGULATIONS**

**22.1** 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.

**23. EXCLUDED PROVIDER**

**23.1** 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 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 Agreement by express written notice for Services not yet rendered prior to the date of exclusion.

**24. GENERAL TERMS**

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

**24.2 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.

**24.3 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.

**24.4 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.

**24.5 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.

**24.6 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.

**24.7 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.

**25. AUTHORITY TO EXECUTE**

**25.1** 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.

## **Exhibit 1**

### **ADDITIONAL IMAGING SYSTEM SERVICE TERMS AND CONDITIONS** *(for Philips and/or Non-Philips Equipment)*

#### **1. SERVICES PROVIDED**

- 1.1. Initial Covered System Inspection.** Within ninety (90) days after the Effective Date, Philips will inspect the Covered System not previously serviced by Philips and notify Customer of any Covered System that does not meet manufacturers' specifications. Philips will provide Customer a written estimate for repairs necessary to bring any of the Covered System within proper manufacturers specifications. Upon Customer's request, Philips will provide necessary repairs at Philips' then current labor and travel rates. If Customer elects not to have Covered System repaired, then Philips may remove such system from coverage under this Agreement.
- 1.2. Repair Service.** Commencing on the Effective Date and subject to the repair limitation below, Philips or Philips' subcontractors will provide repair services for Covered System. Philips will provide all replacement parts, which may be refurbished, and labor necessary to repair Covered System, unless excluded in Section 3 herein. 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 will remove parts from the Covered System Site ("Exchange Basis"). Philips may increase its contract prices if the Covered System is upgraded or reconfigured.
- 1.3. Planned Maintenance Service.** Philips will provide Customer a planned maintenance schedule for the Covered System. Philips will provide such planned maintenance during the service coverage hours (as defined in the Agreement) at a time that is mutually agreed upon. Customer will make the Covered System available in accordance with this Exhibit. Philips or its subcontractors will provide planned maintenance on the Covered System at scheduled intervals. If Philips cannot locate Covered System, or 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 Covered System for planned maintenance, otherwise Customer waives right to service and Philips may delete Covered System from this Agreement.
- 1.4. Software Updates.** Philips will install operating system software updates provided by the Original Equipment Manufacturer (OEM) for Covered System. Software updates mean revisions to OEM proprietary operating system software that enhance existing Covered 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.

#### **2. CONTRACT ADMINISTRATION**

- 2.1. System Additions and Deletions.** After completing the inspection, Customer may add a system to the Covered System list by contacting Philips. Customer and Philips will agree on a mutually agreeable price and contract start date. The Covered System will be added to this Agreement after receipt of the signed inventory modification form. Customer may delete Covered System only if: (i) Customer permanently removes it from operation or (ii) it is no longer under Customer's exclusive ownership or control and Customer notifies Philips in writing. The Covered System will be deleted from the contract pursuant to Section 7 of the Service Agreement Terms and Conditions.
- 2.2. Management and Staffing.** If on-site staffing is provided, Philips will determine and provide the management and service staff necessary to provide the Services under this Exhibit. Philips will pay all salaries, payroll and other employment taxes or fees, worker's compensation insurance, and other charges or insurance levied or required by any federal, state, or local statutes, relating to its employees.
- 2.3.** If applicable, Customer shall execute the Subcontracting Confirmation and Agency Authorization Agreement as required by Philips to perform certain duties and responsibilities included within this Exhibit.

#### **3. EXCLUSIONS**

Unless specifically included in this Agreement, the Services do not include providing or paying the cost of:

- 3.1.** Any rigging or structural alteration incident to the Services;
- 3.2.** Consumable items and supplies (as defined below) ("Consumables"), cryogenes, PET calibration sources, film, batteries, cassettes;
  - 3.2.1.** Consumables include, but are not limited to, the following: Biomedical Equipment batteries and battery chargers; biomedical laser tubes; patient use pads; filters; light bulbs and light sources; line cords and power cords; external cables and hoses; patient leads and cables; SpO2 sensors and O2 sensors; Probes (TOCO, Doppler, Biomed Ultrasound, Pencil, Bladder Scan, Temp probe, etc.); BP hose/cuff; foot pedals; hand pieces; scopes (laryngoscope, baton, endoscope, etc.); defibrillator cables; paddles and test plugs; or table accessories.
- 3.3.** Cosmetic repairs;

- 3.4. The cost of factory reconditioning, rebuilds, or overhauls if repairs cannot maintain the equipment in satisfactory operating condition;
- 3.5. Disposing hazardous, infectious, or biomedical waste or materials;
- 3.6. Providing service to any 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;
- 3.7. Unless otherwise specified in the quote, maintaining or repairing third-party products including but not limited to nuclear camera detector crystals, CT Tubes and radiation therapy tubes, x-ray tubes, flat panel detectors, image intensifiers magnet replacement, magnet refrigeration system (coldhead, compressor, chillers), MR 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.
- 3.8. If this Agreement includes coverage for biomedical services, the following are not included in the definition of Biomedical Equipment: arthroscopy instruments, blood pressure cuffs (accessory or attachment), fume hoods, high-end lab analyzers, lead aprons/shields, nurse call, and surgical robots, , 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.

#### **4. COVERAGE**

- 4.1 Philips will provide services on-site during the hours listed in Customer's service agreement, 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 labor and travel rates. Customer will be charged a minimum of two hours on-site time plus applicable travel charges and expenses per service visit.

#### **5. DOCUMENTATION**

- 5.1 Upon Customer's written request, Philips will provide repair and planned maintenance records for the Covered System.

#### **6. CUSTOMER RESPONSIBILITIES**

During the term of this Agreement, Customer will:

- 6.1. Attend a start-up meeting at Customer's facility, prior to the Effective Date of this Agreement, so Philips can explain the Services to the Customer's management and selected staff;
- 6.2. Provide a secure dedicated space within Customer's main facility and at each additional facility or location as necessary for the resident Philips staff;
- 6.3. Provide Philips with broadband internet or Wi-Fi access for business purposes;
- 6.4. Provide Philips with the Covered System service manuals for any non-Philips System;
- 6.5. Maintain all software licenses applicable to the Covered System;
- 6.6. For Philips use in remote servicing of the System, provide Philips a secure location for hardware to connect System to Philips Remote Service ("PRS").
  - 6.6.1. The PRS hardware remain Philips' property and is only provided during the term of this Agreement;
  - 6.6.2. Provide Philips and its vendors full and free access to the PRS hardware to enable Philips to remotely access the Covered System or non-Philips System;
  - 6.6.3. Provide Philips at each Covered System Site, at all times during the term of this Agreement, a dedicated broadband Internet access node, including public and private interface access, suitable to establish a successful connection to the System through the PRS and Customer network; and
  - 6.6.4. If the Covered System cannot be connected to the PRS, and Customer fails to provide the access described in Section 6, then Customer waives its rights to Services under this Agreement and any uptime guarantee.

#### **7. HELIUM REPLENISHMENT (APPLIES ONLY TO MRI SERVICE)**

- 7.1. If Helium Replenishment Service is included in this Agreement, Customer shall report any magnet cooling system (cold-head, compressor, or chiller) malfunction within twenty-four (24) hours. If Customer fails to report any malfunctions or provide continuous chilled water or power to the MRI system, then Customer is responsible for any additional helium expenses.
- 7.2. Customer shall provide access to the MRI system to perform helium replenishment, cryo refrigeration system and chiller services during contract hours of corrective and/or planned maintenance services.



- 7.3. If the Covered System is not connected to the PRS, then Customer shall report helium level readings weekly for all MRI systems covered under this Agreement into the Philips Helium Reading Registration System at: <https://heliumreg.onephilipsmdc.com/>.
- 7.4. During the term of the Agreement Customer will immediately inform Philips upon the happening of any of the following:
- 7.4.1. An on-screen message appears on the Covered System computer that Helium refill is required; or
  - 7.4.2. The liquid helium level is below the minimum operating helium level as indicated in the Instructions for Use. (In such case an on-screen message may also appear on the system computer indicating that scanning will be prohibited within certain days or immediately. In both cases Customer shall immediately inform Philips and in the latter case Customer shall also immediately cease to operate the MRI Equipment);
  - 7.4.3. A sudden, unexpected drop of liquid helium level is encountered; or
  - 7.4.4. The MRI magnet refrigeration system is out of order and/or not operational.
- 7.5. Customer shall act on alerts provided by the MRI Equipment and/or monitoring processes which apply to the operating environment condition.
- 7.6. If liquid Helium is purchased by Customer from Philips, Customer shall ensure that the filling of liquid Helium is done by Philips authorized personnel only.
- 7.7. If Helium Replenishment Service is excluded from this Agreement, Philips does not accept any responsibility and Philips will not be liable for any cost or damages due to the loss of liquid Helium or due to the services provided by a third party other than a subcontractor of Philips. Any costs will be fully charged to Customer, including the costs of refill of the liquid Helium, including shipment, labor, duties and taxes.
- 7.8. Customer will inform Philips of any planned power outages.
8. **Further use of System Data.**
- 8.1. **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. Customer agrees that any Mandatory Data will be the property of Philips. Part of the Mandatory Data might constitute (non-sensitive) Personal Data. 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). However, in doing so, Philips shall de-identify Customer's data. Philips may use Customer's data in support of such business deliverables and such process of de-identification shall occur on Customer's premises. Separation of such data from the Philips database is impossible, therefore Philips shall have the right to continue using such data upon expiration of this Agreement.
- 8.2. **Enhanced Data.** Customer also acknowledges and agrees that additional system performance data related to errors or status of devices shall be delivered into the custody of Philips, or of systems maintained on Philips' behalf, without notice to Customer. This additional data includes alert such as low disk space and device reboot; performance indicators such as slow database query; and additional statistics such as critically low battery and packets sent ("Enhanced Data"). Customer acknowledges that the Enhanced Data feature is activated as default in the Licensed Software, and Customer is responsible for turning off the Enhanced Data feature at install. Customer acknowledges that by activating the Enhanced Data feature, Customer will be able to access an interface, which allows Customer to export data onto Customer's Network Management System. Customer agrees that any Enhanced Data will be the property of Philips. Customer agrees to assign, and hereby assigns, all right, title, and interest worldwide in the Enhanced Data to Philips. Customer acknowledges and agrees that Philips may use such Enhanced Data for its business purposes without restriction. In addition, Philips will not expose any data set tied to the Customer, to another customer of Philips or any other third party. In addition, Customer will be able to select within the Licensed Software settings if they choose to enable or disable the Licensed Software from sending Enhanced Data information to Philips.

## **Exhibit 2**

### **ADDITIONAL TERMS AND CONDITIONS FOR TECHNOLOGY MAXIMIZER**

#### **1. SERVICES**

If Philips Technology Maximizer ("Technology Maximizer") is purchased under this Agreement and the requirements of the Agreement are satisfied, then Philips will upgrade the Covered System as follows:

**1.1. Software Upgrades and Updates.** Philips will provide software updates and upgrades consisting of revisions to, and new versions of, software for existing applications and operating system licenses when made commercially available by Philips. Any other third-party Software is not included. Customer has no right to updates and upgrades that are released before the start date of the Agreement. If the Agreement expires after Philips notifies Customer that an update or upgrade is available, then Customer is entitled to receive the offered update or upgrade for three (3) months following such termination.

**1.1.1. Technology Maximizer:** Customer is entitled to upgrades to the equipment operating system software, basic application software and software applications previously purchased or bundled with the Covered System when made commercially available. Customer may purchase new, separately licensed functionality or applications for the Covered System separately after the start date of the Agreement. Customer acknowledges that certain functionality in current and previous software versions may not be available in upgrades.

**1.1.2. Technology Maximizer Pro:** If Customer has purchased a Technology Maximizer Pro option under this Agreement, Philips will provide new software applications when such applications are (i) made commercially available by Philips after the Effective Date of this Agreement; (ii) supported by the Covered System hardware configuration; and (iii) intended for use in the "clinical domain" identified in the quotation or otherwise as explicitly specified in the quotation.

**1.2. Hardware Upgrades and Updates.** Software updates and upgrades may require hardware updates or upgrades. Unless included hereunder, Customer is responsible for any such hardware updates or upgrades. If included in the quotation, Philips will provide one commercially available computer hardware upgrade during the term of the Agreement, to the Covered System hardware component(s) expressly described on the quotation under the Technology Maximizer option. Philips will provide such hardware upgrade at the time and quantity as expressly described on the quotation under the Technology Maximizer option. In no case will Philips obligation under any Covered System hardware provided under the Agreement exceed \$5,000 or the amount expressly described on the quotation under the Technology Maximizer option, whichever is greater. This paragraph (b) does not apply if the software only Technology Maximizer option.

**1.3. Ultrasound Hardware Upgrades and Updates.** This Agreement does not include hardware upgrades or updates for Ultrasound systems. Customer is responsible for any hardware upgrades or updates required to install a software upgrade or update.

**1.4.** To receive an upgrade:

**1.4.1** Customer must be in compliance with all terms and conditions of this exhibit and the Agreement, including the availability of Philips remote service capability and access to the Covered System by Philips personnel;

**1.4.2** Customer must identify one Customer representative who will manage and be responsible for Customer's selection and scheduling of upgrades installation under this exhibit.

**1.5** The Covered System that will receive the update or upgrade must meet the specifications of the update or upgrade. Unless provided hereunder, Customer shall provide the Covered System hardware and/or software necessary to meet such specifications. Customer may not resell, transfer, or assign the right to such upgrades, updates, or fixes to any third party. All upgrades, updates, and fixes provided to the Covered System under this exhibit are subject to the terms and conditions of this Agreement, and any license terms and conditions included in the purchase of the system from Philips or later provided to Customer.

#### **2. Installation Services and Clinical Education for Software Upgrades and Updates.**

**2.1** Philips will install the upgrades or updates that Customer is entitled to receive under this Agreement either on-site or remotely, at Philips sole discretion, at a mutually agreeable time. Update or upgrade installation and clinical support of the installation shall take place during standard onsite response hours, Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays.

**2.2** Prior to the installation, Philips will specify the clinical support or clinical education that Customer is entitled to receive to support the software and/or hardware upgrade. Scope, duration, and delivery methodology of the clinical support of the installation or clinical education will vary by upgrade, update, or fix and will be defined by Philips at Philips' sole discretion. If Customer requires additional clinical services, then Philips will provide such services to Customer at Philips' then current labor and material rates. Clinical support at the installation will be provided in support of the new software revision installation and does not include end-user clinical education.

**3. TERMINATION**

- 3.1 If the Agreement is terminated due to the fault of Customer or Customer defaults under the Agreement after any upgrades to the Covered System software or hardware are provided by Philips, then Customer will pay Philips the list price of the provided upgrades within thirty (30) days of such termination or default.

## **Exhibit 3**

### **ADDITIONAL SUPPORT AND ASSIST COVERAGE TERMS & CONDITIONS**

#### **1. SERVICES PROVIDED**

##### **1.1 Training.**

**1.1.1** If training is included with the Agreement, then Philips will admit the number of employees of Customer identified on the face of the Agreement ("Trainee(s)") into the next scheduled training course that relates to the Covered System identified in the quote or this Agreement where space is available, or to any subsequent scheduled course as the parties may agree. Philips will provide training to the Trainee(s) only to the extent service training for the Covered System is included in Philips' training course offerings then in effect and is included on the face of the Agreement. Training will be conducted at Philips' service training facilities, or through remote training options as defined by Philips for the applicable course. All travel and living expenses incurred by the Trainee(s) will be borne by Customer, unless otherwise indicated in this Agreement. Philips may cancel or reschedule courses.

**1.1.2** Philips' obligation to provide training hereunder is expressly subject to the Customer Non-Disclosure Terms and Conditions set forth in Attachment 3-1 to this Exhibit (which are incorporated into this Exhibit) and expressly contingent on each Trainee signing a Customer Employee Non-Disclosure Agreement set forth as Attachment 3-2 to this Exhibit. Trainee(s) must meet the minimum admission requirements set forth in the course syllabus and must satisfy all prerequisites prior to admission. 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 troubleshoot and repair any or all possible malfunctions that may occur in the Covered System.

##### **1.2 Customer Service Documentation; Customer Diagnostic Software License.**

**1.2.1** If software and documentation are included in the Agreement, then Philips grants to Customer and Customer accepts from Philips a limited, non-exclusive and non-transferable license (the "License") to load and run the customer diagnostic software issued for the Philips-manufactured Covered System ("Diagnostic Software") and use customer service documentation issued for the Philips-manufactured Covered System ("Service Documentation") in conjunction with the maintenance, service and repair of the Covered System and at the Covered System Site, and subject to Customer Non-Disclosure Terms and Conditions and Customer Employee Non-Disclosure Agreement. Customer acknowledges that the Diagnostic Software and Service Documentation, and all trademarks, copyrights, patents, trade secrets, proprietary rights, or other property rights of Philips associated therewith, are and will remain the exclusive property of Philips. Customer acknowledges that the Diagnostic Software and the Service Documentation included in this Agreement are only for the Philips-manufactured Covered System, not for any Covered System manufactured by third parties.

**1.2.2** The Diagnostic Software and Service Documentation are licensed by Philips for ultimate end use by government agencies only under the following conditions: (a) software and technical data rights in the Software and Documentation include only those rights customarily provided to end user customers as defined in the Agreement; (b) this customary commercial License in the Software and Documentation is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and, for Department of Defense purchases, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation); (c) if a federal government or other public sector Customer has a need for rights not conveyed under these terms, it must negotiate with Philips to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written agreement specifically conveying such rights must be executed by both parties.

**1.3 Parts Coverage.** If Parts or Combination (parts and labor) Pool coverage is not included in the Agreement, then Philips will sell parts to Customer at Philips' published list price. If Parts coverage is included in this Agreement, then the cost of parts used in corrective maintenance of the Covered System at the Covered System Site is included in this Exhibit, subject to the terms and conditions of this Agreement. Customer may request parts to maintain, service, or repair only Covered Systems at the Site. Customer may not resell or exchange such parts with any third party. If a replaced part is a returnable part as indicated by Philips, Customer must return to Philips the returnable part within fourteen (14) days of shipment. If the parts are resold or exchanged, or the part is not returned to Philips in the time stated, Customer shall pay Philips, published list price for such parts plus freight and any other amounts due Philips. Unless priority parts delivery is included in this Agreement, all replacement parts ordered under this Exhibit will be shipped using Philips standard shipping priority prepaid subject to availability. Other freight arrangements will be at Customer's request and expense.

**1.4 On-Site Coverage.** If on-site coverage is included in the quote, then prior to receiving such coverage, Customer shall follow this process. Customer's trained engineer shall attempt to resolve issue. If Customer's

trained engineer is unable to resolve issue, then Customer shall contact Philips Customer Solutions Center. If Philips Customer Solutions Center is unable to remotely resolve the issue, then Philips shall dispatch an engineer to the Customer Site. The Customer's engineer will be present during all such visits. If the Covered System requires any major component replacements, (for example: tubes, flat panel detectors, and coldheads), then Philips must be present for such replacements. Second Response coverage does not include planned maintenance unless otherwise stated in this Agreement.

- 1.5 Combination Pool (Parts and Labor).** If Customer purchased Combination Pool option, the initial account balance and the Site to which that balance applies ("Site Balance") is specified in the quote. As Customer requests or uses either on-site labor or parts under Combination Pool coverage, the Combination Pool monetary level stated in this Agreement will be reduced at Philips then current standard rates for on-site labor and Philips then current published list price for parts. If Combination Pool coverage is exhausted during any year of the term, then Customer may request on-site labor or parts at Philips' list price less the discount specified in the quote. Combination Pool coverage expires on an annual basis and no credit for any unused portion is carried forward. Customer may allocate the Site Balance to on-site labor or parts purchased by Customer between the Covered Systems at the Site. Customer may not allocate the Site Balance to Covered System not listed in the quote.
- 1.6 Additional Requested Services.** If Customer purchased Assist without labor coverage, then Philips will provide requested on-site labor to Customer at Philips' then current travel and labor rates.
- 1.7 Tubes, Flat Detectors and Image Intensifiers.** If tube, flat detector, or image intensifier coverage is included in the Agreement, then Philips will provide and install these parts on the Covered System.

## **2. CUSTOMER RESPONSIBILITIES**

- 2.1** Customer shall assign the Trainee to perform the obligations of Customer described under this Agreement.
- 2.2** Customer shall promptly notify Philips if the Trainee's employment with Customer terminates or Customer assigns another trained employee to maintain or repair the Covered System. Customer's selected employee shall attend training and customer shall pay list price for such training.
- 2.3** Customer shall maintain the Covered System in strict compliance with the planned and remedial maintenance requirements specified by Philips, utilizing replacement parts that meet or exceed Philips' specification.
- 2.4** If Customer does not meet these responsibilities, then Philips may terminate any or all of the services provided under this Exhibit and may void any warranty provided herein.

## **3. TERMINATION**

- 3.1** In addition to the termination rights described in this Agreement, Philips may immediately terminate this Exhibit or the Agreement and the License without liability to Customer by providing Customer written notice of termination upon any of the following: (a) Customer removes the Covered System from operation at the Covered System Site; (b) Customer no longer owns sole and exclusive title to the Covered System (c) someone other than Customer, Philips, or an authorized Philips distributor or dealer services the Covered System; (d) a competitor of Philips acquires an ownership interest in Customer; or (e) Customer or the Trainee(s) violates any condition or restriction set forth in Customer Non-Disclosure Agreement Terms and Conditions or Customer Employee Non-Disclosure Agreement. Customer must notify Philips immediately upon occurrence of any of the above events.
- 3.2** If Customer or Trainee(s) breaches any other term, covenant, or condition herein, then Philips may terminate this Exhibit or the Agreement and the License without liability to Customer upon three (3) days written notice to Customer.
- 3.3** Upon expiration or termination of this Exhibit or this Agreement, the License expires, and Customer must immediately return the Philips' Diagnostic Software and Service Documentation and all copies or reproductions thereof to Philips at Customer's expense. Such termination or expiration will not relieve Customer of any of its obligations incurred prior to such termination or expiration and will not impair any of Philips' rights that have accrued prior to such date. The covenants of Customer contained herein will survive the expiration or termination of this Exhibit or this Agreement and the License. In addition to all other rights and remedies, Philips is entitled to injunctive relief for any breach by Customer of Section 1.2 or 3 of these terms and conditions.

## **4. WARRANTY AND WARRANTY DISCLAIMER**

- 4.1** In addition to the warranty obligations described in this Agreement, Philips warrants that any replacement parts or special service tools and Service provided under this Exhibit will be free from defects in material and workmanship for a period of ninety (90) days from the date of installation (when installed by Philips) or thirty (30) days from the date the parts were delivered to Customer (when not installed by Philips). Certain items such as x-ray tubes, photomultiplier tubes, cathode-ray tubes, and high voltage transformers may carry separate warranties that are provided at the time of purchase. This warranty does not include any defect or failure to perform that is the direct or indirect result, in whole or in part, of accident, abuse, misuse, operation

of the Covered System in which the part is installed outside of its environmental, electrical or performance specifications, power fluctuations or failures, fires, floods or other similar or dissimilar natural causes, or improper installation or calibration. If a part does not comply with this warranty, then Customer shall promptly return part to Philips and Philips shall repair or replace such part. THE WARRANTIES STATED ABOVE ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT WITH RESPECT TO ANYTHING PROVIDED BY PHILIPS OR ITS SUBCONTRACTOR UNDER THIS EXHIBIT OR THE AGREEMENT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY IS THE REPAIR OR REPLACEMENT OF A NON-CONFORMING PART AND THE REPAIR OF COVERED SYSTEM FOR ANY NON-CONFORMING SERVICE.

**Support and Assist Coverage Exhibit  
Customer Non-Disclosure Terms and Conditions  
Attachment 3-1**

1. Philips holds and owns certain proprietary and trade secret information ("Philips Proprietary Information"), relating to the installation, service, maintenance, and repair of the products, whether or not manufactured or sold by Philips, including the Software and Documentation and any work product or diagnostic results derived therefrom, any oral, written, or electronically recorded information regarding the installation, service, maintenance, repair, construction, design, theory of design, theory of operation, diagnostic tools, teaching materials, hardware schematics, electrical schematics, software of any nature in any form and on any media, repair analysis techniques or maintenance of any Covered System, service notes, safety bulletins, installation manuals, service manuals, service diagnostic tools and techniques, and any other corresponding information of Philips or any of its predecessors, successors, affiliates, subsidiaries, or assigns.
2. Customer warrants that all Trainees attending any Philips training are Customer's employees. For the purpose of this Attachment, the term "employee", or other words contemplating the same relationship as "employee", will have the same meaning as when the term is used by the Internal Revenue Service (as distinct from an "independent contractor") to determine whether there is an obligation to withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid.
3. Prior to the disclosure or dissemination of any Philips Proprietary Information to Customer's Trainee(s) and prior to attending training, Customer must deliver an original copy of the signed Customer Employee Non-Disclosure Agreement (Attachment 3-1) to Philips. The execution by Customer's Trainee(s) of the Customer Employee Non-Disclosure Agreement and its delivery to Philips is a CONDITION PRECEDENT to Philips' obligation to train or otherwise disclose or disseminate any Philips Proprietary Information to said Customer Trainee(s).
4. Customer will treat any Philips Proprietary Information that is received in strictest confidence and will refrain from disclosing or disseminating any of the Philips Proprietary Information without Philips' prior, express, written consent, except to those employees of the Customer who have executed a Customer Employee Non-Disclosure Agreement. Except as permitted under this Attachment, Customer will not directly or indirectly disclose, copy, access, run, perform, display, disassemble, decompile, reverse engineer, modify, adapt, translate, create derivative works, distribute, sublicense, sell, assign, or otherwise transfer all, or any part, of the Proprietary Information, or cause or permit the Proprietary Information, or any part thereof, to be used by any persons, other than the Trainees, and only on the Covered System and at the applicable System Site. Except as permitted under this Attachment, Customer will not, directly or indirectly, permit or authorize its employees to use the Philips Proprietary Information.
5. All information disclosed to Customer's Trainee(s) in connection with said training, and all related information regarding the Covered System that Customer may have access to, is presumed to be Philips Proprietary Information.
6. The use or disclosure of any of the Philips Proprietary Information by Customer's Trainee(s) for purposes other than the service, maintenance, or repair of the Covered System without Philips' prior, express, written consent is a breach of this Attachment and an unauthorized use or disclosure of Philips' trade secrets or other proprietary rights. If there is such an unauthorized use or disclosure, Philips will be entitled to compensation for all damages arising out of or resulting therefrom, including all consequential damages and attorney's fees incurred by Philips. Considering the substantial investment that Philips has in the Philips Proprietary Information, a violation by or for Customer of any provision of this Attachment or the Customer Employee Non-Disclosure Agreement by Customer's Trainee(s) will cause irreparable injury to Philips and Philips will be entitled, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining the Customer from violating, or continuing to violate, its obligations under this Attachment. Customer confers jurisdiction to enforce the provisions of this Attachment upon the courts of any State of the United States. Customer shall indemnify and hold Philips harmless from any damages resulting from Customer or Trainee's breach of this Attachment.
7. The obligations hereunder to maintain the confidentiality of Philips Proprietary Information will endure permanently. Customer may not assign this Attachment nor may any party succeed to Customer's rights and obligations hereunder, unless with the prior written approval of Philips. The terms and conditions of this Attachment will inure to and be binding upon Customer's affiliates, parent, subsidiaries, officers, directors, employees, agents, or other representatives and its permitted assigns and successors.

**Support and Assist Coverage Exhibit  
Customer Employee Non-Disclosure Agreement  
Attachment 3-2**

\_\_\_\_\_  
(Name of Employee)

\_\_\_\_\_  
(Customer Name)

\_\_\_\_\_  
(Residence Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip)

In consideration of the training, Customer service documentation, or Customer service software received or to be received by me from Philips, and in further consideration of Philips' disclosure to me of its proprietary information, I agree to the following:

1. "Philips Proprietary Information" means information disclosed to me, known by me, or acquired by me as a result of my training by Philips or its agents or in my subsequent use of such information in the installation, service, maintenance, or repair of Covered System, including any oral, written, or electronically recorded information regarding the installation, service, maintenance, repair, construction, design, theory of design, theory of operation, diagnostic tools, teaching materials, hardware schematics, electrical schematics, software of any nature in any form and on any media, repair analysis techniques or maintenance of any Covered System, service notes, safety bulletins, installation manuals, service manuals, service diagnostic tools or techniques, and any other corresponding information of Philips or any of its predecessors, successors, affiliates, subsidiaries, or assigns.
2. I acknowledge that as part of Philips' training of me in the installation, service, maintenance, and repair of the Covered System, I may receive the benefit of Philips' substantial investment in the Philips Proprietary Information, including thousands of man-hours of work by Philips employees in the development of teaching materials for its training school and development of special troubleshooting and diagnostic methods and protocols relating to the installation, service, maintenance, and repair of the Covered System. I further acknowledge that as part of the Philips training I may be given extensive teaching regarding the theory of design and operation of the Covered System, including training on how to set up and operate such System. As part of the training, I may be taught to analyze the design and details of operation of the system and subsystems in the Covered System. During the training program, I may have disclosed to me Philips Proprietary Information that is not available outside of Philips, including detailed schematic diagrams of the Covered System; the Philips instructors may go through the schematics with me and discuss the operation of the System, system and subsystems, their potential trouble spots and how to isolate and repair such trouble spots. Selected detailed manufacturing instructions developed by Philips may be disclosed to me. Philips' troubleshooting methods and protocols for the service and maintenance of its System include detailed computer diagnostic programs and special codes to perform tests and analysis to help locate and repair particular malfunctions of components of the Covered System. I acknowledge that the Philips training will be extremely valuable and cannot be duplicated elsewhere and that only at the Philips training school will I have access to the special troubleshooting methods and protocols that Philips has developed through painstaking effort and at great expense.
3. I will treat the Philips Proprietary Information in strictest confidence, and will not, directly or indirectly, disclose, reverse engineer, decompile, modify, adapt, translate, create derivative works, disassemble, disseminate, lecture upon, publish, copy, or duplicate any such information without Philips' prior, express, written consent. This obligation to maintain the confidentiality of Philips Proprietary Information will endure permanently.
4. Upon my employment with my current employer ("Employer") terminating, prior to or upon my retirement, or upon a change in my employment responsibilities wherein my use of the Philips Proprietary Information is no longer required, I will turn over to a designated individual employed by the Employer, all Philips Proprietary Information then in my possession, custody, or control. I will not retain any copies or reproductions of correspondence, memoranda, reports, notebooks, drawings, photographs, excerpts, or any other documents relating in any way to the Philips Proprietary Information that are entrusted to me at any time during my employment with the Employer. If Employer does not designate an employee or agent to accept the surrender of the information and material as required above, I will immediately inform Philips of these circumstances.
5. For a period of one year from the date of termination or retirement of my employment with Employer, I will not directly or indirectly install, service, maintain or repair the type of Covered System on which I am being trained, unless I become employed by Philips, one of its authorized dealers or distributors, or a Philips Customer having an agreement similar to this Agreement that permitted me to attend the training.



6. I acknowledge that no license or right is granted hereby and no license or right will be incorporated herein by reference, by implication, or by other means with respect to or under any invention, patent application, patent, copyright, trade secret, or proprietary right contained in or in any way relating to the Philips Proprietary Information.
7. This Agreement and all matters relating to the construction, interpretation, and enforcement thereof will be governed by the laws of the State of Washington, without regard to principles of choice of law.
8. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, the unenforceable provision may be stricken without affecting the remainder of this Agreement.

---

*(Employee's Signature)*

*(Date)*

## **Exhibit 4**

### **UPTIME GUARANTEE**

#### **1. GENERAL**

- 1.1** Philips shall provide to Customer the uptime guarantee specified below ("Uptime Guarantee") on the Covered System listed in the quote and/or Attachment A as having uptime as an entitlement ("Uptime System"). Uptime System does not include peripherals, such as external printers, archiving devices, external display monitors, or attached cameras. If Customer does not meet its responsibilities described in Section 6 of Exhibit 1, then Customer is not entitled to the benefits of this Uptime Guarantee.
- 1.2** If an item of Uptime System fails to achieve the Uptime Percentage (as defined below) set forth on Schedule 3(a) below, then Customer, as its sole and exclusive remedy, will receive a discount of future Agreement payment(s), as described in Section 3 below.

#### **2. DEFINITIONS**

- 2.1** Measurement Period: The measurement period for determining Uptime Percentage is twelve (12) months beginning on the effective date of this Agreement and thereafter on the anniversary date of the effective date.
- 2.2** Base Hours shall mean the hours/day and days/week over which Uptime Hours and Downtime will be calculated during the Measurement Period. The Base Hours will be the contracted hours of coverage provided for under this Agreement for each Uptime System.
- 2.3** Downtime shall mean the time that the Uptime System is unable to produce diagnostic images during the Base Hours of any given Measurement Period solely due to Philips' design, manufacturing, materials, or Service performance failure. Measurement of Downtime commences when the Customer notifies the Philips Customer Care Solutions Center that the Uptime System is unable to produce diagnostic images. Downtime does not include time due to planned maintenance service, cryogen replenishment, installation of upgrades and updates, x-ray tube replacement, or an occurrence or condition excluded under this Agreement. Philips may verify Downtime and adjust calculations accordingly.
- 2.4** Uptime Hours are determined by subtracting the total Downtime from the Base Hours for a particular piece of Uptime System [Uptime Hours = Base Hours – Downtime].
- 2.5** Uptime Percentage is determined by dividing the Uptime Hours by the Base Hours and multiplying the result by 100 [Uptime Percentage = (Uptime Hours/Base Hours) x 100].

#### **3. ADJUSTMENT SCHEDULE**

- 3.1** If the Uptime Percentage specified in Schedule 3(a) is not achieved for Uptime System, then the specified discount will be applied to all payments due during the next Uptime Measurement Period for the Uptime System that did not achieve the Uptime Percentage.
- 3.2** Schedule 3(a): Agreement Payment Adjustment Schedule for Uptime System

99% Uptime Guarantee		98% Uptime Guarantee		96% Uptime Guarantee	
Uptime Percentage	Discount	Uptime Percentage	Discount	Uptime Percentage	Discount
99% - 100%	None	98% - 100%	None	96% - 100%	None
96% - 98.9%	5%	95% - 97.9%	5%	91% - 95.9%	5%
93% - 95.9%	10%	92% - 94.9%	10%	<90.9%	10% *
<92.9%	15% *	<91.9%	15% *		

\* Maximum adjustment available

#### **4. UPTIME PERCENTAGE DETERMINATION**

- 4.1** The Uptime Percentage is determined according to the following formula: Uptime Percentage = (Uptime Hours/Base Hours) x 100. Below are examples of how Uptime Percentage is determined:

**4.1.1 MEASUREMENT EXAMPLE # 1:**

Base Hours = 8 AM to 5 PM Monday through Friday over the 12-month Measurement Period.  
9 hours x 5 days x 52 weeks = 2,340 Base Hours  
2,340 Base Hours – 60 Downtime hours = 2,280 Uptime Hours

$(2280 / 2340) * 100 = 97.4\%$  Uptime Percentage

**4.1.2 MEASUREMENT EXAMPLE # 2:**

Base Hours = 8 AM to 9 PM Monday through Friday over the 12-month Measurement Period.

13 hours x 5 days x 52 weeks = 3,380 Base Hours

3,380 Base Hours – 60 Downtime hours = 3,320 Uptime Hours

$(3320 / 3380) * 100 = 98.2\%$  Uptime Percentage

**5. REPORTS**

**5.1** Uptime Percentage performance reports will be provided at the Customer's request for any Measurement Period while this Uptime Guarantee remains in effect. To receive any applicable discount, Customer must notify Philips in writing that the Uptime Percentage was not achieved for a particular Uptime System within sixty (60) days after the end of a Measurement Period.

**6. WARRANTY DISCLAIMER**

**6.1** Philips full Uptime Guarantee obligations to Customer are described in this Exhibit. Philips provides no warranties under this Uptime Guarantee. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO THIS UPTIME GUARANTEE.

**7. LIMITATIONS OF REMEDIES AND DAMAGES**

**7.1** Philips total liability, if any, and Customer's exclusive remedy with respect to this Uptime Guarantee and Philips performance hereunder is limited to the remedies stated herein.

## **Exhibit 5**

### **ADDITIONAL CLINICAL EDUCATION TRAINING TERMS & CONDITIONS**

**1. TRAINING COVERAGE**

1.1 Philips will provide the clinical education and product applications training ("Training") that customer has selected from the Philips' course catalog(s) ("Course Catalog(s)"). Clinical Education training and credits will expire upon termination or expiration of the Agreement.

**2. EXCLUSIONS**

2.1 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.

**3. SCHEDULING**

3.1 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

**4. ATTENDANCE**

4.1 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.

**5. COURSE LOCATION**

5.1 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. PAYMENT OPTION**

**6.1 Flexible Spending Agreements.** If Customer purchased Flexible Spending Agreement 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 carry over from year to year during the agreement. However, any remaining account balance at the end of the agreement will not be refunded.

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

**7. TRAVEL**

7.1 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.

**8. WARRANTY DISCLAIMER**

8.1 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.

## **Exhibit 6**

### **MONITORING ANALYTICS & THERAPEUTIC CARE ENTERPRISE SOFTWARE EVOLUTION SERVICES EXHIBIT**

#### **1. SERVICES PROVIDED**

**1.1** Commencing on the Effective Date and subject to the limitations below, Philips will provide Software Evolution Services described herein or as otherwise specified on the quotation(s) for Covered System.

##### **1.2 Definitions.**

**1.2.1 Software Version.** Introduces major release with significant new features and functionality.

**1.2.2 Software Update.** Provides minor enhancements or improvements to performance, maintainability and serviceability.

**1.2.3 Software Fix.** Corrects Product Defect.

**1.2.4 Sector.** A location on a central station where a patient and the related patient equipment is assigned. Often used interchangeably with beds or patients.

**1.2.5 Node.** A device or node refers to an IP addressable network node, which is a configured component of a Philips Patient Monitoring System/Solution.

#### **2. TERM**

**2.1** For new Monitoring Analytics and Therapeutic Care products installed by Philips the Service Agreement term will commence immediately following installation and availability for first patient use. The term of the Agreement is defined in the quote and the end date for all sectors will be co-terminus. For existing systems or renewals of existing service contracts the start and end date of the Agreement shall be defined in the quotation.

**2.2 Renewal Option.** This Agreement will automatically renew at the end of the initial term, unless either party provides notice of non-renewal ninety (90) days prior to the expiration of the current term. Customer shall amend their current purchase order or issue a new purchase order prior to the expiration of the current term. The annual fee for such renewal period will increase by no more than the annual CPI.

#### **3. TELEPHONE AND REMOTE SUPPORT**

**3.1 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.

**3.2 Remote Access & Diagnostics.** Philips may remotely access the Covered System to perform Services. Customer shall provide Philips remote access to the Covered System.

**3.3 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.

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

**3.5 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.

#### **4. INTERFACE SUPPORT**

**4.1** Philips supports the DICOM and HL7 communication to and from the Covered System as they exist at the Covered System sector at the time of installation. In the case of new software versions provided hereunder, Philips shall provide the following:

**4.1.1** If the Covered System, 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.

**4.1.2** 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 Covered System 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 Covered System to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the Customer.

## **5. SOFTWARE VERSIONS AND UPDATES**

**5.1** If a new software version or update is available 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:

**5.1.1** Philips will provide new software versions and updates of software for existing applications. When required for the new software version, Philips will provide operating system licenses and database software licenses (SQL) for PIIC iX and IBE applications. Unless specified, third party software including, but not limited to operating system licenses, database software licenses, client access licenses, and anti-virus software is not included. Hardware updates and replacement are not included. Customer has no right to software which has reached the published end of sale date.

**5.1.2** **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.

**5.1.3** **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.

**5.2** To receive a new software version:

**5.2.1** Customer must be in compliance with all terms and conditions of this Exhibit and the Agreement, including the availability of PRS capability and access to the Covered System by Philips personnel;

**5.2.2** 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

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

**5.3** Unless specifically included elsewhere in this Agreement, software versions and updates do not include: implementation services, applications that were not purchased with the Covered System, including virus protection software, security patches, custom interface software, operating system software, or software updates of third party software (e.g. Citrix). 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.

**5.4** 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 Exhibit are subject to the terms and conditions of this Exhibit, the Agreement, and any license terms and conditions included in the purchase of the product from Philips or later provided to Customer.

**5.5** Philips will notify Customer if a new version update or upgrade is available. If the Agreement expires after Philips notifies Customer that a new software version is available, then Customer is entitled to receive the offered new software version for three (3) months following such termination. If Philips does not receive such response from Customer within the three-month period, then Philips is under no obligation to provide such new software version.

## **6. SOLUTIONS REVIEW**

**6.1** During the term of the Agreement Philips will provide Customer an annual customized review session to provide a deeper understanding, isolate and troubleshoot issues with the Customer configured PIC iX and IBE solution. Review sessions will be scheduled upon Customer request, at a mutually agreeable date and time Monday – Friday 8:00 a.m. -5:00 p.m. PIC iX System Review sessions will be provided at an off-site location within a reasonable distance of Customer. Each session will be limited to ten (10) Customer participants and cannot be rescheduled. IBE System Review sessions will be provided to a maximum of eight (8) participants.

**6.2** The scope, duration, and delivery methodology of the PIC iX System solutions review sessions will vary and will be defined by Philips with input from the Customer but will remain in Philips' sole discretion and will not exceed twenty-eight (28) hours in aggregate.

## **7. PERFORMANCEBRIDGE FOCAL POINT**

**7.1** During the term of this Agreement, Philips will provide Customer access to the Performance Bridge Focal Point Licensed Software ("Focal Point"). Access to Focal Point is available to Customer and Philips support personnel working on-site and remotely. Philips will install Focal Point on virtual or physical hardware, pursuant to the system installation and reference guide. Customer will be entitled to all new software versions, updates, telephone and remote support during the term of the Agreement.

- 7.2 License Grant.** Subject to any usage limitations set forth on the quotation and license restrictions set forth in this Section 7, Philips grants to Customer a non-exclusive and non-transferable right and license to use the Focal Point Licensed Software ("Licensed Software") in accordance with the Agreement and this Exhibit. The License shall continue for the term of the Agreement, except that Philips may terminate the License if Customer is in breach or default of these additional terms and condition applicable to Focal Point or material breach of this Agreement in general. In such instance of license termination, Customer shall return the Licensed Software and any authorized copies thereof to Philips immediately upon expiration or termination of this License.
- 7.2.1** The License does not include any right to use the Licensed Software for purposes other than the operation of the product. Customer may not copy, reproduce, sell, assign, transfer, or sublicense the Licensed Software for any purpose without the prior written consent of Philips. Customer shall reproduce Philips' copyright notice or other identifying legends on such copies or reproductions. Customer will not (and will not allow any third party to) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover the product or Licensed Software by any means whatsoever.
- 7.2.2** The License 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.
- 7.2.3** Customer agrees that only authorized officers, employees, and agents of Customer will use the Licensed Software or have access to the Licensed Software (or to any part thereof), and that none of Customer's officers, employees, or agents will disclose the Licensed Software, or any portion thereof, or permit the Licensed Software, or any portion thereof, to be used by any person or entity other than those entities identified in the Agreement. Customer acknowledges that certain of Philips' rights may be derived from license agreements with third parties, and Customer agrees to preserve the confidentiality of information provided by Philips under such third-party license agreements.
- 7.2.4** The Licensed Software shall be used only on the product(s) covered under this Agreement.
- 7.2.5** Each license hereunder is limited to one Focal Point per Customer site/location, and each Focal Point instance is limited to 4,000 device/node connections. A device or node refers to an IP addressable network node, which is a configured component of a Philips Patient Monitoring System/Solution. If additional Focal Point instances are required, determined solely by Philips, they will be provided upon mutual agreement of both parties. If there is more than one site or location, Customer must purchase the appropriate software maintenance coverage for each additional site or location to receive access to the Focal Point license.
- 7.2.6** Customer acknowledges that the Philips Administrator Account of the Licensed Software, and any related login credentials that Philips provides to Customer, shall not be used, and Customer agrees not to so use, for any reason. Instead, the Licensed Software's Philips Administrator Account functionality is for use only by Philips and its authorized service representatives.
- 7.2.7** The Licensed Software shall be used only on the product(s) referenced in the quotation ("Products"). Customer may transfer the Licensed Software in connection with sale of the Product to a healthcare provider who accepts all of the terms and conditions of this License and Agreement, provided that Customer is not in breach or default of this License, this Agreement, or any payment obligation to Philips
- 7.3 Modifications.** If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software shall become null and void. This does not apply to patches or software updates provided by Philips to Customer. If Customer or any of its officers, employees, or agents should devise any revisions, enhancements, additions, modifications, or improvements in the Licensed Software, Customer shall disclose them to Philips, and Philips shall have a non-exclusive royalty-free license to use and to sub-license them.
- 7.3.1** The Licensed Software is licensed to Customer on the basis that (a) Customer shall maintain the configuration of the products as they were originally designed and manufactured; and, (b) the product includes only those subsystems and components certified by Philips. The Licensed Software may not perform as intended on systems modified by anyone other than Philips or its authorized agents, or on systems which include subsystems or components not certified by Philips. Philips does not assume any responsibility or liability with respect to unauthorized modification or substitution of subsystems or components.
- 7.4 Processing of Personal Data.** Other than as set out in Section 7.3 herein, in the event that Customer requests Philips to do so, Philips will process Personal Data only on instruction of Customer as set out in the Agreement and/or other communications made by Customer to Philips (where such instructions are consistent with the terms of the Agreement) ("**Instruction**"), unless otherwise required by applicable law. Customer warrants (a) that its Instructions will comply with applicable law including in relation to the protection of Personal Data and (b) that its Instructions will not cause Philips to violate applicable law. "**Personal Data**" means the information

relating to an identified (or identifiable) individual, and collected, received, generated or otherwise obtained or processed by Philips in relation to or in the context of the Agreement or the relationship with Customer.

**7.3.1 Instructions to Philips.** Customer hereby instructs Philips to process Personal Data for or in relation to performing the services to Customer and other obligations under this Agreement, and as necessary to comply with other reasonable instructions provided by Customer where such Instructions are consistent with the terms of this Agreement. Customer represents and warrants to Philips that, prior to activation of the Philips' remote access to Customer's IT network: (1) Customer has the right and the authority to provide the Personal Data to Philips for Philips' use of such data pursuant to this Agreement, including cross-border transfers; (2) Customer has provided any required notices and obtained any required consents from individuals as required by applicable law to collect and process their Personal Data (which may include medical and health data); (3) Customer is fully and solely responsible for the accuracy, legality and consistency of the Personal Data it provides to Philips, and (4) Customer's provision to Philips of the Customer Data and Philips' use of Personal Data pursuant to this Agreement will not violate any applicable law, or privacy policy.

**7.3.2 Inability to Provide Data.** Customer will notify Philips without undue delay if Customer becomes aware that Customer is unable to meet its obligations under this Section 7. In such cases, Philips will work with Customer in good faith to determine whether and how to deliver the services.

**7.3.3 Protection of Data.** Philips will take appropriate commercially reasonable technical and organizational measures to protect the Personal Data, at a level appropriate to the risk, of accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access during the processing.

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

**7.4.1 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. Customer agrees that any Mandatory Data will be the property of Philips. Part of the Mandatory Data might constitute (non-sensitive) Personal Data. 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). However, in doing so, Philips shall de-identify Customer's data. Philips may use Customer's data in support of such business deliverables and such process of de-identification shall occur on Customer's premises. Separation of such data from the Philips database is impossible, therefore Philips shall have the right to continue using such data upon expiration of this Agreement.

**7.4.2 Enhanced Data.** Customer also acknowledges and agrees that additional system performance data related to errors or status of devices shall be delivered into the custody of Philips, or of systems maintained on Philips' behalf, without notice to Customer. This additional data includes alert such as low disk space and device reboot; performance indicators such as slow database query; and additional statistics such as critically low battery and packets sent ("Enhanced Data"). Customer acknowledges that the Enhanced Data feature is activated as default in the Licensed Software, and Customer is responsible for turning off the Enhanced Data feature at install. Customer acknowledges that by activating the Enhanced Data feature, Customer will be able to access an interface, which allows Customer to export data onto Customer's Network Management System. Customer agrees that any Enhanced Data will be the property of Philips. Customer agrees to assign, and hereby assigns, all right, title, and interest worldwide in the Enhanced Data to Philips. Customer acknowledges and agrees that Philips may use such Enhanced Data for its business purposes without restriction. In addition, Philips will not expose any data set tied to the Customer, to another customer of Philips or any other third party. In addition, Customer will be able to select within the Licensed Software settings if they choose to enable or disable the Licensed Software from sending Enhanced Data information to Philips.

### **8. CUSTOMER SUCCESS MANAGEMENT SERVICES**

**8.1** 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:

**8.1.1** 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.

**8.1.2** 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.

**8.1.3** 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.

## **9. ANNUAL REVIEW**

**9.1** If applicable, Philips and Customer will annually review the equipment and systems covered by the Agreement to match quantities of equipment and Covered Systems actually in use at Customer's site(s). Philips may update the contract to match this inventory, including adjusting price based on actual equipment and systems owned by the customer. Philips has no responsibility to Service systems not listed on the original or updated contract

## **10. TEST SYSTEM**

**10.1** Philips will provide software versions for an off-line test system ("Test System"). The Test System software version will provide full functionality for up to each PIIC iX patient sector covered under this Agreement. The Test System is not to be used in a production environment or to provide patient care. No additional services will be provided hereunder for the Test System.

## **11. FETAL MONITORS**

**11.1** New software versions for Fetal Monitors will be installed by Philips during an ongoing upgrade project for PIICs or MP/MX bedsides, when a new version is made commercially available.

## **12. VITAL SIGNS**

**12.1** Philips will only provide new software versions for Vital Signs and VM monitors. Philips will not provide any installation labor to upgrade Vital Signs monitors. All Vital Signs monitor versions will be the Customers responsibility. Vital Signs software provided by Philips are limited to VS3/VS4, VM, VSI and VS2+ monitors only.

**12.2** The upgrade part number provided under Enterprise SMA are:

863089 – SureSigns VM Software Upgrade Kit

863090 – SureSigns VS3 Software Upgrade Kit

863295 – SureSigns VSI, VS2+ Software Upgrade Kit

## **13. SYSTEM HEALTHCHECK**

**13.1** During the term of the Agreement Philips will provide one (1) on-site visit per contract year, scheduled Monday - Friday between 8:00 a.m. -5:00 p.m., to evaluate Covered System and network health and compatibility. Following each annual visit, Philips will provide Customer a report with recommendations relative to the Covered System.

## **14. CLINICAL IMPLEMENTATION SERVICES**

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

**14.2 Go-Live Support.** Philips will provide on-site 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. Customer may request additional go-live support, or go-live support outside of standard hours, at an additional cost.

**14.3 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.

**14.3.1** Clinical Education class size is limited to ten (10) participants;

**14.3.2** Customer will provide a suitable location for on-site classroom education; and

**14.3.3** Customer will provide full and free access and use of the Covered System for training.

**14.4 Equipment Configuration.** Configuration services will be scheduled between 7:00 a.m. – 7:00 p.m. Monday through Friday and are limited to the new software version implementation. Customer will provide access and use of their equipment. Configurations are based on current monitoring solution. If expert screen services are required, as determined solely by Philips, they are available at an additional cost.

**14.5 User Acceptance Testing.** Following implementation of a new software version or Equipment Configuration services, Philips and Customer will perform user acceptance testing. Philips will provide Customer with an electronic copy of the resultant configuration files and reports.

**14.6 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 Exhibit, then Philips shall not be obligated to perform such Clinical Services.

**14.7 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.

## **15. ADVANCED TECHNOLOGY SERVICE**

If included in the quotation, Philips will provide on-site installation services for new versions that Customer is entitled to receive under this Agreement, at a time mutually agreed to by Philips and the Customer.

**15.1** For full version upgrade and update projects, Philips Project Manager, FSE, Network Engineer, and Integration Engineer will provide remote or on-site consultative advisory services as needed.

**15.2** Philips technical resource will provide consultative advisory services may be provided up to two (2) times per contract year either onsite or remote, as determined by Philips, based upon Customer need.

**15.3** If purchased with this Agreement, Philips will provide on-site installation of validated Microsoft operating system patches available for the Philips PIIC iX system(s) up to four (4) times per contract year. Additionally, Philips will also provide up to two (2) on-site visits per contract year for emergency patch support, upon Customer request.

## **16. CUSTOMER RESPONSIBILITIES**

**16.1 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 ensuring that proper backup procedures are in place as outlined in the System Installation and Reference Guides.

**16.2 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 Exhibit. Customer waives all rights to services and service deliverables under this agreement unless PRS connectivity is enabled and maintained.

**16.3 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.

**16.4 Software Version Levels.** Customer must maintain the Covered System at a currently supported version to receive support under this Exhibit.

**16.5 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.

**16.6 Data Reconstruction.** The Customer shall follow the recommended back-up processes as outlined in the Covered System Installation or Reference Guide. 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.

**16.7 Intermediate Resolutions.** Customer shall implement any intermediate resolutions or workarounds as requested by Philips while Philips seeks a long-term resolution.

## **17. SERVICE LIMITATIONS**

**17.1 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.

**17.2 Anti-Virus Statement.** Philips software is a computer-based medical product and, therefore, may be subject to attack by outside computer viruses. The software required to prevent attack by a computer virus must be constantly monitored and updated. Customer shall install and maintain anti-virus software in accordance with

the Covered System Installation or Reference Guide. Philips shall use reasonable efforts to notify Customer if Philips becomes aware of any virus in the software licensed to Customer under this Agreement.

**17.3 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.

## **18. EXCLUSIONS**

In addition to the Service Exclusions set forth in the Agreement, the following Service Exclusions apply to the applicable Monitoring Analytics and Therapeutic Care Services.

**18.1** Any combining of the Covered System with a non-qualified device. A non-qualified device is:

**18.1.1** 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);

**18.1.2** any product supplied by Philips that has been modified by the Customer or any third party; and

**18.1.3** any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements;

**18.1.4** 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.

**18.2** Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the Covered System.

**18.3** If the Covered System covered by this Exhibit is software only, then notwithstanding anything to the contrary in the Agreement or this Exhibit, network, hardware and parts are not included in the Services.

**18.4** Any network related problems.

**18.5** The cost of Consumables, software media, and cassettes.

## **Exhibit 7**

### **MONITORING ANALYTICS & THERAPEUTIC CARE ENTERPRISE SOFTWARE MAINTENANCE AGREEMENT HARDWARE SUPPORT COVERAGE**

1. If included in the Agreement, Philips 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, and repairs, as follows:
2. **SUPPORT PARTS**
  - 2.1 If the Agreement includes Support Parts, then Philips will provide the technical and clinical phone support and parts for corrective services for Covered System hardware covered under this Exhibit. Unless otherwise specified, parts will be shipped via priority delivery.
3. **SUPPORT PARTS WITH SECOND RESPONSE**
  - 3.1 If the Agreement includes Support Parts with Second Response, then Philips will provide the technical and clinical phone support, parts and second response for corrective services for Covered System hardware covered under this Exhibit. Unless otherwise specified, parts will be shipped via priority delivery.
4. **COMPREHENSIVE ONSITE**
  - 4.1 If the Agreement includes Comprehensive Onsite, then Philips will provide the technical and clinical phone support, parts, and comprehensive onsite support for corrective services for Covered System hardware covered under this Exhibit. Unless otherwise specified, parts will be shipped via priority delivery.

## Exhibit 8

### ADDITIONAL MONITORING ANALYTICS & THERAPEUTIC CARE SERVICE TERMS & CONDITIONS

#### 1. SERVICES PROVIDED

1.1 Commencing on the Effective Date and subject to the limitations below, Philips will provide Services listed on the quotation(s) for Covered System.

Agreement Type	Telephone and Remote Support	On-Site Response Time	On-Site Labor	On-Site Travel	Parts	Priority Parts Delivery
<b>Comprehensive Onsite Support</b>	24x7x365 Two Hour Response	On-Site Next Business Day†	Included	Included	Included††	Included
<b>Support Parts Agreement</b>	24x7x365 Two Hour Response	Not Applicable	Not Applicable	Not Applicable	Included††	Included
<b>Support Parts Agreement with Second Response</b>	24x7x365 Two Hour Response	On-Site Next Business Day†	Included	Included	Included††	Included
<b>Bench Repair Service</b>	24x7x365 Two Hour Response	Not Applicable	Included – Remote Only	Not Applicable, Return Shipping Only	Included††	Typical Bench Repair Time: 3-6 business day return†
<b>Unit Exchange Services</b>	24x7x365 Two Hour Response	Not Applicable	Not Applicable	Not Applicable	Unit exchange only	Typical Unit Exchange Time: Next business day exchange†
<b>Biomed Assist Services</b>	24x7x365 Two Hour Response	Not Applicable	Not Applicable	Not Applicable	Discount Applied	Included

†Excluding Philips recognized holidays

††Excluding Supplies and Accessories

#### 2. RESPONSE TIME DEFINITIONS

2.1 “Initial Telephone Response” is the time for a qualified Philips service representative to make direct telephone contact with the Customer following a request for Service.

2.2 “On-Site Response Time” is the time for a qualified Philips service representative to arrive on site to begin service.

2.3 “Typical Bench Repair Time” is the time for a qualified Philips service representative to repair and return the Customers’ existing Monitoring Analytics and Therapeutic Care equipment (from Philips receipt of the device to Philips shipment of such equipment to Customer).

2.4 “Typical Unit Exchange Time” is the time for a qualified Philips service representative to exchange the Customers’ Monitoring Analytics and Therapeutic Care equipment with a new and/or refurbished device.

2.5 “Philips Next Business Day” response depends on the location of the Customer. Philips response time will be: (i) next business day response time for System Sites located within 100 miles of the responding Philips Field Service Engineer, (ii) two business days for System Sites located within 101 – 200 miles of the responding Philips Field Service Engineer, (iii) three business days for Covered System Sites located within 201 – 300 miles of the responding Philips Field Service Engineer, and (iv) the response time described in the Agreement for System Sites located greater than 301 miles of the responding Philips Field Service Engineer.

#### 3. COVERAGE

3.1 **Telephone and Remote Support.** Telephone and remote support coverage is included with all service agreements identified in this Exhibit.

3.2 **Remote Access & Diagnostics.** Philips may remotely access the Covered System to perform Services. Customer shall provide Philips access to the Covered System.

3.3 **On-Site Labor and Travel.** Philips will provide the labor and travel necessary for the delivery of corrective maintenance Services during on-site Service coverage hours. On-site service coverage hours are Monday to Friday, 8:00 am to 5:00 pm excluding holidays.

- 3.4 Extended Coverage Hours.** Extended coverage hours for on-site labor coverage is seven (7) days per week, twenty-four (24) hours per day, including Philips holidays.
- 3.5 Overtime On-Site Labor and Travel.** If extended coverage hours are not included, then overtime on-site labor will be billed at a preferred rate.
- 3.6 Parts and Priority Delivery of Parts.** Philips will provide the parts for corrective maintenance services. Priority Delivery of parts is next business day delivery for parts ordered prior to 3:00 PM Eastern.
- 3.7 Planned Maintenance.** If Planned Maintenance Service is included in the Agreement, then Philips will provide Customer a planned maintenance schedule for the Covered System. Philips will provide such planned maintenance during the service coverage hours at a mutually agreed upon time. Customer will make the Covered System available in accordance with this Exhibit. Philips will provide planned maintenance on the Covered System at scheduled intervals. Philips may perform Planned Maintenance activities at the Philips repair facility for certain Monitoring Analytics and Therapeutic Care equipment. If loaner equipment is included in the service agreement and provided to Customer, then Customer will execute a loaner agreement to document its responsibility for any loss or damage to such equipment while in Customer's possession. All terms and conditions of the Agreement and this Exhibit will apply to the loaner equipment.

#### **4. CUSTOMER RESPONSIBILITIES**

##### **4.1 Support Parts Agreement.**

- 4.1.1** Ensure that all Monitoring Analytics and Therapeutic Care equipment of the same model number at the Customer Site is covered by the same Support Parts Agreement program, a separate Philips service agreement (except Biomed Assist Services), or Philips standard warranty. If such service agreement or warranty expires during the term of this Agreement, then all equipment of the same model as the Monitoring Analytics and Therapeutic Care equipment must be added to the existing Support Parts Agreement program (except Biomed Assist Services) or a new Philips service agreement that includes a Support Parts Agreement.
- 4.1.2** Designate and train a biomedical engineer and an alternate, who will serve as Philips' primary support contacts. Such individuals must be familiar with all aspects of biomedical training provided by Philips. In addition, the biomedical engineer shall maintain the integrity of the Covered System. If the Customer does not have a trained biomedical engineer who meets Philips requirements, then Customer shall purchase the optional Biomedical Engineer (BMET) Training course.
- 4.1.3** If Customer cannot resolve the Covered System problem and requires on-site assistance of Philips, then Philips will provide such on-site service at Philips then current standard labor and travel rates per service visit (unless Second Response coverage is included in this Agreement).

- 4.2 Biomed Assist Services.** If Biomed Assist Services coverage is included in this Agreement, then Customer will ensure that any Monitoring Analytics and Therapeutic Care equipment not covered by Biomed Assist Services is covered under a Support Parts Agreement, a separate Philips service agreement, or Philips standard warranty. If such Support Parts Agreement, service agreement, or warranty expires during the term of the Agreement, then all Monitoring Analytics and Therapeutic Care equipment covered under such expiring agreement or warranty must be added to the existing Biomed Assist Services coverage or a new Philips service agreement.

- 4.3 Parts.** If Parts coverage is included in this Agreement, then, subject to the terms and conditions of this Agreement, the cost of parts used in corrective maintenance of the Covered System at the Customer Site is included in this Agreement. Philips may reject any Customer requests for parts that is not for the Covered System. The following applies regardless if Parts coverage is included or not included in this Agreement: Customer acknowledges and agrees that all parts furnished pursuant this Agreement will only be used in the maintenance, service and repair of the Covered System at the Customer Site. Customer may not resell or exchange such parts with any third party. Unless Priority Parts Delivery is included in the Services Agreement, all replacement parts ordered under this Services Exhibit will be shipped using Philips standard shipping priority prepaid subject to availability. Other freight arrangements will be at Customer's request and expense. Philips may use refurbished components in the repair of the Covered System; the refurbished components shall be subject to the same inspection and quality control procedures as all other materials used in the manufacture of the Monitoring Analytics and Therapeutic Care equipment, and shall be warranted to the same extent that a non-refurbished component is warranted.

- 4.4 Exchange Unit:** If a replaced part is a recyclable or exchange part as indicated on Philips' published price book, then Customer must return to Philips the failed recyclable or exchange part for which the replacement part was furnished within seven (7) days of shipment of the replacement part. If the failed part is not returned to Philips in the time stated, Customer will pay Philips, in addition to any other amounts due Philips, Philips' published list price for such parts plus freight.

- 4.5 Remote Access.** For Philips to provide remote support, Customer must provide remote access to the Covered System via Philips specified connection as described in this Agreement and notify Philips of any changes to

connection procedures. Customer must also provide Philips with access to domain accounts, passwords, and connections that are necessary to perform required Services.

- 4.6 Security.** Customer shall provide security to prevent unauthorized Covered System access to proprietary and confidential information
- 4.7 Software Version Levels.** Customer must maintain the Covered System at a currently supported version to receive support under this Exhibit.
- 4.8 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 new software versions, updates and fixes, the Customer must maintain all associated hardware to the then-current specification for the software upgrades.
- 4.9 Data Reconstruction.** The Customer shall follow the recommended back-up processes as outlined in the System Installation or Reference Guide. The Customer is also 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.
- 4.10 Intermediate Resolutions.** Customer shall implement any intermediate resolutions or workarounds that Philips requests while seeking a long term Covered System resolution.

## **5. SERVICE LIMITATIONS**

- 5.1 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.
- 5.2 Anti-Virus Statement.** Philips software is a computer-based medical product and, therefore, may be subject to attack by outside computer viruses. The software required to prevent attack by a computer virus must be constantly monitored and updated. Customer shall install and maintain anti-virus software in accordance with the System Installation or Reference Guide. Philips shall use reasonable efforts to notify Customer if Philips becomes aware of any virus in the software licensed to Customer and covered under this Agreement.
- 5.3 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.

## **6. EXCLUSIONS**

In addition to the Service Exclusions set forth in the Agreement, the following Service Exclusions apply to Services.

- 6.1** Any combining of the Covered System with a non-qualified device. A non-qualified device is:
  - 6.1.1** 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);
  - 6.1.2** Any product supplied by Philips that has been modified by the Customer or any third party; and
  - 6.1.3** Any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements.
  - 6.1.4** Any product that has reached its "End of Life". "End of Life" means equipment that is at least six (6) months beyond the end of life date, which is determined by the manufacturer.
  - 6.1.5** Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the Covered System.
  - 6.1.6** Any network related problems.
  - 6.1.7** The cost of Consumables software media, and cassettes

## **Exhibit 9**

### **CLINICAL INFORMATICS SERVICE AGREEMENTS**

#### **1. SERVICE**

Commencing on the Effective Date and subject to the limitations below, Philips will provide services listed on the quotation(s) for Covered System.

**Table 1 - Coverage Types**

<b>Coverage Types</b>	<b>Telephone and Remote Support, Interface Support</b>	<b>Software Upgrades</b>	<b>Installation Services for Software Upgrades</b>	<b>Hardware Coverage</b>	<b>Customer Success Management services</b>	<b>Strategy realization services</b>
<b>IntelliSpace CORE</b>	Included	Not Available	Not Available	Optional; See Hardware Support Attachment	Not Available	Not Available
<b>IntelliSpace BASIC</b>	Included	Included (every other)	Included	Optional; See Hardware Support Attachment	Not Available	Not Available
<b>Essential Service Agreement</b>	Included	Included	Included	Optional; See Hardware Support Attachment	Not Available	Not Available
<b>Comprehensive Service Agreement</b>	Included	Included	Included	Optional; See Hardware Support Attachment	Included	Not available
<b>Prestige Service Agreement</b>	Included	Included	Included	Optional; See Hardware Support Attachment	Included	Included

#### **2. TELEPHONE AND REMOTE SUPPORT**

**2.1 Telephone Support.** Telephone and Remote Support coverage is included with all service agreements identified in the Exhibit. Technical Telephone and Remote Support coverage Services are available twenty-four hours per day, seven days per week including Philips recognized holidays. Clinical Telephone and Remote Support coverage is available Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays.

**2.2 Initial Telephone Response.** If Philips receives a Customer request for service Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays, then Philips will make reasonable efforts to make an initial response within one hour from the receipt of the request. Otherwise, Philips will respond within two hours of the receipt of the original message.

**2.3 Remote Access & Diagnostics.** Philips may remotely access the Covered System to perform services. Customer shall provide Philips access to the Covered System.

**2.4 On-Site Response.** Philips primary method for software services is telephone and Philips Remote Services. Philips may provide on-site software support services to resolve software issues that cannot be resolved through Philips' primary resolution method. On-site services is next business day, Monday through Friday, excluding Philips recognized holidays, 8:00 AM to 5:00 PM local time, and provides for labor and travel necessary for the delivery of corrective Services.

**2.5 Philips Internet-based Customer Support Tools.** Philips will provide access to Philips web-based support tool for the System(s) covered under the Service Agreement.

#### **3. INTERFACE SUPPORT**

**3.1** Philips supports the DICOM and HL7 communication to and from the Covered System as they exist at the time of installation. In the case of upgrades, Philips shall provide the following software maintenance Services:

**3.1.1** If the Philips Covered System, interoperability mapping engine, or Biomedical Equipment is upgraded to the latest version of the existing application, Philips will restore the inbound / outbound communication to the pre-upgrade condition with like-for-like parameters. If incremental parameters or functionality are available as a result of the upgrade and Customer purchases or chooses to use these parameters or functionality, then Customer shall pay the cost of any additional work required to implement and support the new communication capabilities at Philips' then-current standard labor and material rates for such Service.



- 3.1.2** Philips' interface support does not include the modification of any interface due to interface changes in third party hardware or software. If a planned upgrade of the Covered System involves modifications to the interface specifications, then Customer shall provide Philips detailed technical information on such modifications at least ninety (90) days in advance of the planned upgrade. And, Philips shall work with the third party to understand changes in interface specifications and format and may modify and upgrade the Covered System to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the Customer. The Customer shall pay the cost of any additional work required to implement and support the new interface specifications at Philips' then-current standard labor and material rates for such Service.

#### **4. SOFTWARE UPGRADES, UPDATES, AND FIXES**

If a software upgrade, update, or fix (i) is available for the Covered System, (ii) is included in the Agreement, and (iii) the requirements of the Agreement are satisfied, then Philips will update or upgrade the Covered System application software during the term of the Agreement as follows:

- 4.1** Software Upgrades and Updates. Philips will provide software updates and upgrades consisting of revisions to, and new versions of, software for existing applications. Third party software including, but not limited to operating system licenses, database software licenses, client access licenses, and anti-virus software is not included. Hardware updates and upgrades are not included. Customer has no right to updates and upgrades that are released before the start date of the Agreement. Also, if Customer has an IntelliSpace Basic service agreement, they are only entitled to every other major software release upgrade. If the Agreement expires after Philips notifies Customer that an update or upgrade is available, then Customer is entitled to receive the offered update or upgrade for three (3) month following such termination.
- 4.1.1** Functionality. Customer is entitled to additional functionality or options previously purchased or bundled with the software if available in the update or upgrade. Customer may purchase new, separately licensed functionality or options for the Covered System separately after the start date of the Agreement. Customer acknowledges that certain functionality in current and previous software versions may not be available in upgrades.
- 4.1.2** Hardware updates and upgrades. Software updates and upgrades may require hardware updates or upgrades. Customer is responsible for any such hardware updates or upgrades. Upgrade installation and clinical support of the installation are subject to the terms of this Agreement.
- 4.2** To receive an upgrade:
- 4.2.1** Customer must be in compliance with all terms and conditions of this Exhibit and the Agreement, including the availability of Philips remote service capability and access to the Covered System by Philips personnel;
- 4.2.2** Customer must identify one Customer representative, in writing to Philips, who will manage and be responsible for Customer's selection and scheduling of upgrades installation under this Exhibit; and
- 4.2.3** The Covered System that will receive the update or upgrade must meet the specifications of the update or upgrade. Customer shall provide the Covered System hardware and/or software necessary to meet such specifications.
- 4.3** Unless specifically included elsewhere in this Agreement, software updates, upgrades, and fixes do not include: functionality, applications, options or the like that were not purchased with the system, including virus protection software, security patches, custom interface software, operating system software, software updates of third party software (e.g. Citrix). Philips shall have no responsibility to provide software upgrades, updates or fixes for minor software defects.
- 4.4** Customer may not resell, transfer, or assign the right to such upgrades, updates, or fixes to any third party. All upgrades, updates, and fixes provided to the System under this Exhibit are subject to the terms and conditions of this Exhibit, the Agreement, and any license terms and conditions included in the purchase of the system from Philips or later provided to Customer.

#### **5. INSTALLATION SERVICES FOR SOFTWARE UPGRADES, UPDATES, AND FIXES**

- 5.1** Philips will install the upgrades, updates, or fixes that Customer is entitled to receive under this Agreement either on-site or remotely, at Philips sole discretion, at mutually agreeable time.
- 5.2** During the installation, Philips will provide clinical support or clinical education that Customer is entitled to receive under the purchased coverage type. If Customer requires additional clinical services, then Philips will provide such services to Customer at Philips' then current labor and material rates. Clinical support at the installation will be provided in support of the new software revision installation and does not include end-user clinical education. Clinical support at the installation may be provided remotely at Philips sole discretion.
- 5.3** Update or upgrade installation and clinical support of the installation shall take place during standard onsite response hours, Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays, unless the twenty-four hours by seven days per week (includes Philips observed holidays) software upgrade implementation option is purchased in addition to the standard agreement. The twenty-four hours by

seven days per week option provides after hours and weekend software update and software upgrade installation and clinical support of the installation. The twenty-four hours by seven days per week option is not available for all Philips products or service agreements. If Customer requires additional installation support or clinical services, then Philips will provide such installation or services to Customer at Philips then current labor and material rates.

## **6. CLINICAL EDUCATION**

- 6.1** Philips will perform the clinical support of the installation or clinical education for upgrades, updates, or fixes that Customer is entitled to receive under this Agreement, at a mutually agreeable time. Scope, duration, and delivery methodology of the clinical support of the installation or clinical education will vary by upgrade, update, or fix and will be defined by Philips at Philips sole discretion.

## **7. CUSTOMER SUCCESS MANAGEMENT SERVICES**

This section is only applicable to Customers with an IntelliSpace Comprehensive or Prestige service agreement. Philips will perform the following services and assign a resource familiar with the Customer account, system configuration, key stakeholders, and with issues management and escalation as a point of bidirectional contact.

- 7.1** Philips will schedule and deliver a remote monthly service history meeting and provide a service history report. The report will show all service issues resolved during the previous month and will show all open / unresolved issues. The monthly meeting will focus on progress and refinement of the resolution plan for the mutually prioritized open / unresolved issues.
- 7.2** For any downtime or chronic system issues, Philips will schedule a meeting to review an After-Action Report describing the root cause of the issue, and any preventative steps that can be taken by Philips and/or the Customer to prevent issue recurrence.
- 7.3** Prior to delivering any software upgrade, Philips will work with the Customer to identify and mitigate dependencies relative to the software upgrade. The dependency mitigation plan will address resource needs, hardware needs, operating system requirements, interoperability and other dependencies for the software upgrade.

## **8. STRATEGY REALIZATION SERVICES**

This section is only applicable to Customers with an IntelliSpace Prestige service agreement. The services include:

- 8.1** A scheduled annual meeting designed to align Philips service deliverables with Customer's strategy and strategic initiatives for the coming year.
- 8.2** Each year, Philips will deliver one hundred sixty (160) hours of service work, delivered during Philips normal business hours (Monday through Friday, 8am to 5pm excluding Philips recognized holidays). The services may include, but are not limited to clinical educational consulting and programmatic design, infrastructure and/or interoperability design and implementation, server virtualization, etc. The services will be delivered in alignment with the Customer's prioritized strategic initiatives identified during the 7.A scheduled annual planning meeting. Image migration services and productivity optimization consulting services are expressly excluded.

## **9. CUSTOMER RESPONSIBILITIES**

- 9.1 System Administrator.** The Customer shall designate an individual(s) to serve as its 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 Covered System Administrator shall maintain the integrity of the System operation and ensure that proper backup procedures are in place.
- 9.2 Remote Access.** Customer must provide necessary 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 Exhibit. Customer waives all rights to services and service deliverables under this agreement unless PRS connectivity is enabled and maintained.
- 9.3 Security.** 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.
- 9.4 Software Version Levels.** Customer must maintain the Covered System at a currently supported version to receive support under this Exhibit.
- 9.5 Hardware Revision Levels.** Customer must maintain all associated Covered System hardware, firmware, and middleware at the required revision levels for the software version. To receive software updates and upgrades, the Customer must maintain all associated hardware to the then-current specification for the software updates or upgrades.
- 9.6 Data Reconstruction.** Customer shall follow the recommended back-up processes as outlined in the System Installation or Reference Guides. Customer is also 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. For an additional charge based upon published labor and material rates, Philips will offer services on a commercially reasonable efforts basis to reconstruct data.

**9.7 Intermediate Resolutions.** Customer shall implement any intermediate resolutions or workarounds as requested by Philips while Philips seeks a long-term resolution.

## **10. SERVICE LIMITATIONS**

**10.1 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 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. Philips may offer, for an additional charge based upon published labor and material rates, hardware support and software restoration services.

**10.2 Anti-Virus Statement.** Philips software is a computer-based medical product and, therefore, may be subject to attack by outside computer viruses. The software required to prevent attack by a computer virus must be constantly monitored and updated. Customer shall install and maintain anti-virus software in accordance with the System Installation or Reference Guide. After installing the software, Customer shall have the burden of proof if it claims that Philips introduced a virus discovered in the software. Customer will pay an additional amount based on Philips' then-current time and materials rates for such work in respect of services rendered in connection with a virus that was not introduced by Philips. Philips shall use reasonable efforts to notify Customer if Philips becomes aware of any virus in the software licensed to Customer under this Agreement.

**10.3 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. However, if Customer's request, then Philips may provide non-Philips software assistance on a time and materials basis, at Philips then-current time and materials rates, as available.

## **11. SERVICE EXCLUSIONS**

In addition to the Service Exclusions set forth in the Agreement, the following Service Exclusions apply to Services provided under this Exhibit.

**11.1** Any combining of the Covered System with a non-qualified device. A non-qualified device is:

- 11.1.1** 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);
- 11.1.2** Any product supplied by Philips that has been modified by the Customer or any third party;
- 11.1.3** Any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements; or
- 11.1.4** 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.

**11.2** Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the Covered System.

**11.3** If the system covered by this Exhibit is software only, then notwithstanding anything to the contrary in the Agreement or this Exhibit, hardware and parts are not included in the Services.

**11.4** Any network related problems.

**11.5** The cost of Consumables, software media, and cassettes.

**Exhibit 9-A**  
**Philips Clinical Informatics Service Agreements for IntelliSpace Portal**

**Service:** Commencing on the Effective Date and subject to the limitations below, Philips will provide services listed on the quotation(s) for Covered System.

**Table 1 - Coverage Type**

Coverage Type	Telephone and Remote Support, Interface Support	Software Upgrades	Installation Services for Software Upgrades	Hardware Coverage	Customer Success Management services	Strategy realization services
<b>Essential Service Agreement</b>	Included	Included	Included	Optional; See Hardware Support Attachment	Not Included	Not available
<b>Comprehensive Service Agreement</b>	Included	Included	Included	Optional; See Hardware Support Attachment	Included	Not available

1. **Telephone and Remote Support**
  - 1.1. **Telephone Support.** Telephone and Remote Support coverage is included with all Service Agreements identified in the Exhibit. Technical Telephone and Remote Support Coverage Services are available twenty-four hours per day, seven days per week including Philips recognized holidays.
  - 1.2. **Initial Telephone Response.** If Philips receives a Customer request for service Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays, then Philips will make reasonable efforts to make an initial response within one hour from the receipt of the request. Otherwise, Philips will respond within two hours of the receipt of the original message.
  - 1.3. **Remote Access & Diagnostics.** Philips may remotely access the System to perform service activities, product improvements, customer workflow, business analytics, etc. Customer shall provide Philips access to the System remotely
  - 1.4. Remote proactive monitoring – ISP server and applications will be proactively monitored over Phillips Remote Services connectivity channel
2. **Interface Support.** Philips supports the DICOM and HL7 communication to and from the System as they exist at the System Site at the time of installation. In the case of upgrades, Philips shall provide the following Software Maintenance Services:
  - 2.1. If the Philips System, interoperability mapping engine, or biomedical device is upgraded to the latest version of the existing application, Philips will restore the inbound / outbound communication to the pre-upgrade condition with like-for-like parameters. If incremental parameters or functionality are available as a result of the upgrade and Customer purchases or chooses to use these parameters or functionality, then Customer shall pay the cost of any additional work required to implement and support the new communication capabilities at Philips' then-current standard labor and material rates for such Service.
  - 2.2. Philips' interface support does not include the modification of any interface due to interface changes in third party Hardware or Software. If a planned upgrade of the System involves modifications to the interface specifications, then Customer shall provide Philips detailed technical information on such modifications at least ninety (90) days in advance of the planned upgrade. And, Philips shall work with the third party to understand changes in interface specifications and format and may modify and upgrade the System to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the Customer. The Customer shall pay the cost of any additional work required to implement and support the new interface specifications at Philips' then-current standard labor and material rates for such Service. Philips is following formal standards. In the event a 3<sup>rd</sup> party does not follow the DICOM or other acceptable standard, Philips may charge a fee for the work of the 3<sup>rd</sup> party.
3. **Software Upgrades, Updates and Fixes.** If a software upgrade, update, or fix (i) is available for the System, (ii) is included in the Agreement, and (iii) the requirements of the Agreement are satisfied, then Philips will update or upgrade the System application software during the term of the Agreement as follows:
  - 3.1 Software Upgrades and Updates. Philips will provide Software updates and upgrades consisting of revisions to, and new versions of, Software for existing applications. Customer will pay professional fee with respect to Software

upgrades. Third-party Software which classified as an a la carte option including, but not limited to operating system licenses, database Software licenses, client access licenses, and anti-virus Software is not included. Hardware updates and upgrades are not included unless Customer purchases separately.

- 3.1.1 Hardware from Philips. Customer has no right to updates and upgrades before the start date of the Agreement. Philips will provide Hardware support warranty throughout the contract term.
- 3.1.2 Hardware updates and upgrades. Software updates and upgrades may require Hardware updates or upgrades. Customer is responsible for any such Hardware updates or upgrades unless Customer Purchases Hardware from Philips. Upgrade installation and clinical support of the installation are subject to the terms of this Agreement.
- 3.1. To receive an upgrade:
  - 3.1.1. Customer must be in compliance with all terms and conditions of this Exhibit and the Agreement, including the availability of Philips remote service capability and access to the System by Philips personnel;
  - 3.1.2. Customer must identify one Customer representative, in writing to Philips, who will manage and be responsible for Customer's selection and scheduling of upgrades installation under this Exhibit; and
  - 3.1.3. The System that will receive the update or upgrade must meet the specifications of the update or upgrade. Customer shall provide the System hardware and/or software necessary to meet such specifications.
- 3.2. Unless specifically included elsewhere in this agreement, software updates, upgrades, and fixes do not include: functionality, applications, options or the like that were not purchased with the System, including virus protection software, security patches, custom interface software, operating system software, software updates of third party software (e.g. Citrix). Philips shall have no responsibility to provide software upgrades, updates or fixes for minor software defects.
- 4. **Installation Services for Software Upgrades, Updates and Fixes.** Philips will install the upgrades, updates, or fixes that Customer is entitled to receive under this Agreement either on-site or remotely, at Philips sole discretion, at mutually agreeable time.

During the installation, Philips will provide clinical support or clinical education that Customer is entitled to receive under the purchased coverage type. If Customer requires additional clinical services, then Philips will provide such services to Customer at Philips' then current labor and material rates. Clinical support at the installation will be provided in support of the new software revision installation. Clinical support at the installation may be provided remotely at Philips sole discretion.

Update or upgrade installation and clinical support of the installation shall take place remotely, subject to mutually agreed schedule or if required to be onsite, Philips will provide service during standard onsite response hours, Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays, subject to mutually agreed schedule. If Customer requires additional installation support or clinical services, then Philips will provide such installation or services to Customer at Philips then current labor and material rates.

If it is a bundled sale with Vue PACS Services, Customer may direct its inquiries or issues to Vue PACS Account Manager through Account Management Services.

5. **Customer Responsibilities**

- 5.1. **System administrator.** The Customer shall designate an individual(s) to serve as its 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 System operation and ensure that proper backup procedures are in place.
- 5.2. **Remote access.** Customer must provide necessary remote access, required information, and support for the System to connect to Philips Remote Service (PRS). PRS is the basis for Services delivered under this Exhibit. Customer waives all rights to services and service deliverables under this agreement unless PRS connectivity is enabled and maintained.
- 5.3. **Security.**

**Access Control:**

Customer is responsible for providing adequate security to prevent unauthorized System access Control to Philips (or its third-party vendors) proprietary and confidential information.

**Security patches management,**

Security patching of all Operating Systems will be provided centrally via Philips Patching team

**Anti-Virus protection:**

Anti-Virus protection is provided by the installation of antivirus supporting SW, alternatively, the site is authorized to install their own anti-virus SW as long the SW doesn't conflict with ISP SW components. Scanning Exclusions shall be set per Scanning Exclusions list provided by Philips.

- 5.4. **Software version levels.** Customer must maintain its Systems at a currently supported version to receive support under this Exhibit.

- 5.5. **Hardware.** If Customer elects to purchase Hardware from Philips, Philips will provide Customer with all Hardware during the contract term as service equipment. Philips maintains all right, title and interest in and to the Hardware. Customer agrees to keep the Hardware free and clear from all claims, liens, and encumbrances and will not assign, sublet, or grant a security interest in the Hardware. Customer may not install any third-party software on the Hardware without Philips' prior written consent. Customer, shall, at Customer's expense, maintain insurance against all risks of damage to and loss of the Hardware other than that caused by Philips or Philips' agents.

Philips shall upgrade or replace the Hardware as necessary during the contract term (a) to support the service levels as set forth on this Agreement and (b) if required to support an Update of the Software.

For the purpose of this Section, Hardware shall mean the server hardware necessary to operate the Software. Hardware excludes any non-Philips client hardware, such as a computer, workstation, terminal or other electronic device used to access the Hardware.

if Customer provides its own Hardware, Customer must maintain all associated System hardware, firmware, and middleware at the required revision levels for the software version. To receive software updates and upgrades, the Customer must maintain all associated hardware to the then-current specification for the software updates or upgrades.

- 5.6. **Data reconstruction.** Customer shall follow the recommended back-up processes as outlined in the System Installation or Reference Guides. Customer is also 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. For an additional charge based upon published labor and material rates, Philips will offer services on a commercially reasonable efforts basis to reconstruct data.

- 5.7. **Data Storage.** It is Customer's responsibility to provide its own long-term storage for data stored on the Portal server.

- 5.8. **Intermediate Resolutions.** Customer shall implement any intermediate System resolutions or workarounds as requested by Philips while Philips seeks a long-term System resolution.

6. **Service Limitations.**

- 6.1. **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 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 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. Philips may offer, for an additional charge based upon published labor and material rates, Hardware support and Software restoration Services.

- 6.2. **Anti-Virus Statement.** Philips Software is a computer-based medical product and, therefore, may be subject to attack by outside computer viruses. The Software required to prevent attack by a computer virus must be constantly monitored and updated. If Customer elects not to have Philips installing anti-virus Software, Customer shall install and maintain anti-virus Software in accordance with the System Installation or Reference guides and Philips will not be responsible for providing any updates to Anti-Virus Software. After installing the software, Customer shall have the burden of proof if it claims that Philips introduced a virus

discovered in the software. Customer will pay an additional amount based on Philips' then-current time and materials rates for such work in respect of Services rendered in connection with a virus that was not introduced by Philips. Philips shall use reasonable efforts to notify Customer if Philips becomes aware of any virus in the Software licensed to Customer under this Agreement.

- 6.3. **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. However, if Customer's request, then Philips may provide non-Philips Software assistance on a time and materials basis, at Philips then-current time and materials rates, as available.

7. **Service Exclusions.** In addition to the Service Exclusions set forth in the Agreement, the following Service Exclusions apply to Services.

- 7.1. Any combining of the System with a non-qualified device. A non-qualified device is:

7.1.1. Any product (hardware, firmware, software, or cabling) not supplied and supported by Philips, whether used internal or external to System without Philips' approval. Examples include, software patches, security fixes, and service packs from the operating system, web browser, or database software manufacturer(s), for example, monitoring software;

7.1.2. Any product supplied by Philips that has been modified by the Customer or any third party;

7.1.3. Any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements; or

7.1.4. 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.

- 7.2. Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the System.

- 7.3. If the System covered by this Exhibit is software only, then notwithstanding anything to the contrary in the Agreement or this Exhibit, hardware and parts are not included in the Services.

- 7.4. Any network related problems.

- 7.5. The cost of consumable materials, including batteries, software media, and cassettes.

## **Exhibit 10**

### **CLINICAL INFORMATICS HARDWARE SUPPORT COVERAGE**

1. If included in the Agreement, 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:
  - 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 Exhibit. Unless otherwise specified, parts will be shipped via priority delivery.
2. **EXCHANGE**
  - 2.1 If the Agreement includes Exchange coverage, then Philips will provide technical and clinical phone support as well as determine whether corrective maintenance for particular Covered System components will include Covered System exchange instead of parts. Defective, broken, or otherwise replaced components will become Philips property and will be promptly removed from the Site. Unless otherwise specified, exchange Covered Systems will be shipped via priority delivery.
3. **ONSITE**
  - 3.1 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.



## Exhibit 11

### **BIOMEDICAL SERVICES AND INFOVIEW ASSET MANAGEMENT SOFTWARE SERVICES FOR NON-PHILIPS EQUIPMENT**

#### **1. COVERAGE**

##### **1.1. Biomed Equipment Services**

**1.1.1. Coverage Options.** Philips offers three possible levels of service coverage for every piece of biomedical equipment covered under the contract. The Service Coverages with their respective Service Levels are as follows

**1.1.1.1. Full Service (FS)** – Full Service includes standard parts and on-site service from 8:00am to 5:00pm Monday – Friday, excluding Philips' published holidays. Includes all parts (less consumables) and labor required to maintain and repair the equipment except

**1.1.1.2. Planned Maintenance (PM)** – Planned Maintenance includes parts required to complete PM's (per manufacturer specification) and on-site labor from 8:00am to 5:00pm Monday – Friday, excluding Philips' published holidays. Parts needed to perform repairs identified while performing Planned Maintenance are not included.

**1.1.1.3. Tracking Only (TO)** – Tracking Only includes tracking of service related activities in InfoView based on supplied service reports and invoices. Parts and labor for any PM or repair related activities are not included.

**1.1.2. 1.1.2. Service Exclusions** – This agreement does not include service coverage for any device that has been physically damaged, abused, or used for a purpose other than its intended use regardless of coverage level.

**1.1.3. Repair Limitation.** Philips' responsibility for repair per event is limited to fifty percent (50%) of any unit of Biomed Equipment's current fair market value. Fair market value is to be determined by Philips obtaining 3 quotes from aftermarket medical device providers and taking their average. This value becomes the benchmark for determination of repair viability. Should Customer choose to repair a device whose value is estimated to be less than 50% of the repair cost, they will be responsible for any repair cost in excess of fifty percent (50%) of the fair market value of any unit of Biomed Equipment. (Biomed Equipment may be referred to as "equipment" herein.)

**1.1.4. Repair Limitation – Scope.** Philips' responsibility for Biomedical repair services is limited to repairs which can be performed using parts available from the OEM or equivalent. Philips' is not responsible for cosmetic repairs which do not impact the performance of the unit, nor is Philips' responsible for any type of refurbishment requiring outside services including but not limited to welding or painting.

**1.1.5. Billable Repairs** – Customers choosing Tracking Only (TO), Inventory Only, or No Bid coverage are not entitled to parts and labor at no charge. If Customer directs Philips to repair a device in one of these categories, any part and/or labor that may be needed to repair that device is billable.

**1.1.6. Parts Limitations** – FS and PM coverages do not include "Consumables". Consumables are defined to be any part of a biomedical device where there is an expectation of replacement during the normal course of the products lifetime, or any part of a biomedical device which is designed to be removed from the unit during the normal course of use. Examples of consumables include but are 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, etc. as well as any item that hangs off of or, plugs into, a device.

**1.1.7. Parts Shipping Methods & Quantities for Covered Products** - For PM parts/kits, the default shipping method is ground delivery, which can be upgraded by the customer at additional cost at the time the order is placed. For repair parts on biomedical equipment, when the device has FS coverage, the default shipping method is Priority Overnight. Other shipping options are available (see below) and if chosen will be billed to the customer at the appropriate rate. If a part is ordered from Philips and the supplier chooses not to use the Philips rates, the cost of shipping will be "passed through" to the customer with no mark up.

**1.1.8. Parts Shipping Methods & Quantities for Uncovered Products** - When a device has no coverage and customer requires Corrective Maintenance (CM) assistance from Philips, parts, labor and shipping are billable and Standard shipping (ground) will be used. For devices covered under full service only, priority overnight shipping is included.

**1.1.9. Pass-Through Requirement.** In the event the Agreement includes biomedical products where Philips can neither be trained nor purchase parts and must use the OEM to perform repairs or maintenance, Customer is responsible for all fees associated with the maintenance and repair of these items.

## **2. RECONCILIATIONS**

- 2.1** All covered biomedical equipment and pricing adjustments are made through mutual agreement of the parties and managed through Philips InfoView (the installed base record). After the contract signature date, an initial biomedical inventory provided by Customer (Attachement A), that Philips will use to establish the initial cost to provide Services on the covered Biomedical Equipment, detailed in Attachment A. Service billing will commence on the Effective Date. At the end of each quarter, Philips will review the Customer's installed base in InfoView and provide a reconciliation report of any and all device additions, deletions or changes in coverage along with applicable pricing changes and/or penalty. Such changes will result in corresponding changes to pricing and billing and will be retroactive to the quarterly reconciliation effective date. Customer and Philips must agree and sign a reconciliation form within sixty (60) days of the end of each quarter. Should customer not sign the reconciliation form within sixty (60) days of the end of each quarter or provide written and detailed dispute information, the new price goes into effect on the first day of the third month after the quarter end. Equipment additions, deletions or reductions in coverage to "Tracking Only," "PM Only" or "No Coverage" will result in a penalty of 30% of the remaining per unit value of the contract. Equipment being replaced under contract will not be subject to this penalty.
- 2.2 Price Matching:** Any request for price matching of like devices or a device pool at alternative owned network locations under a Philips contract will have a six month waiting period before the contracts are reconciled.

## **3. INFOVIEW ASSET MANAGEMENT (CMMS) SOFTWARE LICENSES**

- 3.1.** Within ninety (90) days after the Effective Date, Philips will install Philips' CMMS asset management software ("Software") for use at the equipment Site by Philips and Customer's designated employees, subject to the license terms and conditions set forth in this Exhibit. Philips will provide training to Customer's designated employees on the proper use of the Software. In accordance with this Exhibit, Philips will use the Software to prepare and maintain equipment maintenance documentation at the equipment Site and will provide reasonable assistance to Customer in preparing such documentation for The Joint Commission and other applicable licensing or regulatory compliance entities.
- 3.2.** For the term of this Agreement, Philips hereby grants to Customer and Customer accepts from Philips a limited, non-exclusive and non-transferable license (the "License") to use the Software and any documentation associated with the Software ("Documentation") solely in conjunction with documenting the maintenance, service, and repair of the equipment at the equipment Site. The License terminates upon termination of the Agreement for any reason, or upon expiration of the Agreement. Customer acknowledges that the Software and Documentation, and all trademarks, copyrights, patents, trade secrets, proprietary rights, or other property rights of Philips associated therewith, are and will remain the exclusive property of Philips. The License expressly excludes any right to reproduce, duplicate or copy the Software or Documentation or any part thereof without the prior written consent of an authorized officer of Philips. If such written consent is given, and in order to protect Philips' rights, including without limitation, trade secrets and copyrights in the Software and Documentation, Customer will reproduce and incorporate Philips' trade secret notice, copyright notice, or any other identifying legends in any reproductions, duplications, or copies of the Software or Documentation or any part of it made by Customer. All restrictions in this Exhibit relating to the Software and Documentation will apply to any such reproductions, duplications, or copies.
- 3.3.** Philips reserves the right to limit the number of User Licenses provided to Customer under this Agreement. "User" is defined as a specific individual (e.g. identified by an individual login id, access point, or user name) who may access and use the Software during the term of this Agreement. Customer may transfer the License from one User to another at any time during the term of the Agreement, at no additional cost, only when the original User no longer requires access and is no longer permitted access to the Software. Philips also reserves the right to limit the number of additional Users purchased by and made available to Customer.
- 3.4. On-line Remote Technical Support.** Philips will provide Customer with remote technical assistance through the on-line support case submission tool within InfoView. Remote technical support is provided at no additional cost for InfoView contracted designated Users during the Agreement term. Subject to the availability of personnel, Philips will provide, upon Customer request and additional expense, on-site service (invoiced at Philips current travel and labor rates). Technical support may include such requests as: Mass data updates, PM Reschedules, Permission Visibility Issues, Report/Dashboards Questions, Creating or Deactivating a User.
- 3.5. Customer Enhancement/Development Services.** Upon Customer's request, Philips may support customized development enhancements to the base InfoView Software platform (defined as "Custom Modules"). Enhancements are reviewed on a case by case basis, and requested 'work-orders' require

a minimum of two (2) business days to evaluate the requested scope of work prior to responding to Customer. Philips will determine, at its sole discretion, if enhancements are technically feasible and what incremental costs will be associated with the development and delivery of the Custom Modules to the Customer. In all cases, Philips shall own all rights, title, and interest in any Custom Module, including all ideas and intellectual property embedded therein or relating thereto. Philips grants Customer a non-exclusive perpetual License to use such Custom Modules, if delivered, solely for Customer's internal business purposes in connection with the Software and subject to the same limitations with respect to number of Users and assets as granted hereunder. Such Custom Modules may not be assigned, transferred, or shared with a medical device manufacturer, distributor, developer, or software publisher of asset tracking software.

- 3.6. Upgrades and Updates.** Customer shall be entitled to receive all upgrades and updates Philips makes generally commercially available during the term of the Agreement, subject to the same usage rights, limitations, and restrictions applicable to the originally provided version of InfoView. Custom Modules may need additional modifications to be compatible with the Software upgrades and are, subject to resource availability and may be subject to an additional cost. Updates including bug fixes, shall be prioritized by Philips based on the needs and impact such bugs are having on the total customer base using the InfoView Software.
- 3.7. Hosted Service.** Philips InfoView Software application is powered by and run on the Salesforce.com cloud, which is a hot swap redundant server cloud based data repository solution. ("Subscription Host"). Philips does not warrant that the Subscription Host service will be uninterrupted or error free and the Subscription Host service used for the Software is provided subject to the foregoing and other disclaimers set forth in this Agreement applicable to the Software. Customer is reminded that this is an asset management application for biomedical team support and not a clinical application needed to perform patient care services.

#### **4. DATA STANDARDIZATION**

- 4.1. Assets Description Nomenclature.** Customer agrees to adhere to Philips pre-established Asset Description Nomenclature for all assets uploaded into InfoView during the initial implementation and throughout the period of this Agreement; including OEM names, Device Types, Model Names and Model Numbers.
- 4.2. InfoView Standardization.** During the initial implementation of InfoView Software, Philips InfoView support team will assist Customer in standardizing the Customer's initial inventory data prior to uploading data into InfoView. Only data consistent with National Standard field nomenclature can be uploaded into the Software via automated methods. Software and Hosting Service includes importing data only through electronic automated means from National Standard nomenclature into the following InfoView fields: Device Type, Model Name, Model Number, OEM (the "Standard Software Fields") Philips is not responsible to migrate attachments from legacy CMMS systems into the Software. Philips will consider customization of the Software to add fields other than the Standard Software Fields subject to Section 1.4 of this Exhibit. Philips may provide, upon Customer request, a physical inventory list consistent with National Standards for import into the Standard Software Fields. Such services will be offered subject to resource availability, and an additional pre-assessment inventory fee. Customer shall be responsible to update any device that cannot be standardized within the initial implementation period. Philips reserves the right to charge Customer additional fees for any data that requires additional standardization services, subject to resource availability and an additional cost.
- 4.3. Additional Device Model.** If a device model is not already incorporated into the existing InfoView database standards, a User can create the new model and request that it is added to the InfoView Standard Software Fields.
- 4.4. Regulatory Deficiencies.** Philips is not responsible for any regulatory deficiencies for assets that are NOT registered against a National Standard model.
- 4.5. No Personal Health Information.** The Software is not designed to use or access any PHI (as defined under HIPAA). This is an asset management software application only.
- 4.6. Consulting.** Subject to resource availability and additional charge, Philips may offer consulting services to assist Customer to leverage data in the Software for improvements related to asset management activities. Philips reserves all rights, title, and interest, including intellectual property in the ideas used to produce or embedded in any deliverables provided to Customer under a consulting arrangement. Customer retains a non-exclusive perpetual license to use such deliverable for its internal business purpose. For the purposes of clarification and notwithstanding anything to the contrary in this Agreement, Customer shall retain all ownership in Customer data used to produce a deliverable or Customer data included in a deliverable.

## **5. DATA SHARING**

- 5.1. Data Benchmarking.** Philips shall have the right to analyze data on InfoView Software for the purposes of (i) enhancing the Software and Subscription Services, (ii) Software trend analysis, and (iii) technical maintenance of the Software and Subscription Service delivery.
- 5.2. Benchmarking.** Philips shall have the right to share the information collected under term 3.1 with other InfoView users for Software and Subscription Service usage benchmarking purposes provided the data is anonymized to the extent that no specific user or customer is identified.
- 5.3. Access to Necessary Information.** Philips shall have the right to access any other customer information necessary to successfully deliver Services requested by Customer in support of the Software. Inability to access such critical information for these Services would relieve Philips from an obligation to provide such Services hereunder.
- 5.4. Delivery of Customer Data Post Termination.** Upon termination of the Agreement, Philips will make available, within a reasonable period of time and upon Customer request, one copy of Customer data that was the final data on the Subscription Service, prior to such termination. Such copy shall have data extracts provided in a CSV file format. Philips reserves the right to refuse assistance or to charge additional fees for data extracts in any other format, for data migration, for providing file attachments in any format other than the standard InfoView format, or for any other additional requests of data other than those provided upon termination as described herein.

## **6. DOCUMENTATION/USA GOVERNMENT**

- 6.1** The Software and Documentation is licensed by Philips for ultimate end use by government agencies only under the following conditions: (a) service and technical data rights in the Software and Documentation include only those rights customarily provided to end user customers as defined in this Attachment; (b) this customary commercial License in the Software and Documentation is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and, for Department of Defense purchases, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation); (c) if a federal government or other public sector customer has a need for rights not conveyed under these terms, it must negotiate with Philips to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written agreement specifically conveying such rights must be executed by both parties.

## **7. ACCESS TO SOFTWARE**

- 7.1** Customer will provide Philips with a wideband DSL or cable line for use with Philips InfoView Software for each Customer Facility, at Customer's sole expense.

## **8. SYSTEM REQUIREMENTS**

- 8.1** Customer is responsible to meet and maintain the hardware and network requirements as detailed in the InfoView Technical Requirements documentation prior to Software installation. Philips reserves the right to make changes to the technical requirements for future versions of the Software and to make Software feature changes, at its sole discretion.

## **9. RESPONSIBILITY FOR USE/UNAUTHORIZED ACCESS**

- 9.1** Customer agrees with respect to the Software: (i) to obtain access to the internet in order to access and use the Software, at the Customer's sole expense; (ii) to complete the implementation and set-up process as required by Philips to access the Software; (iii) that Customer is entirely responsible for maintaining the confidentiality of any passwords and account information required for access to the Software, and for all acts (other than those of Philips or its employees and agents) that occur in connection with Customer's account; (iv) to immediately notify Philips of any unauthorized use of Customer's account, breach of security or loss or theft of user names or passwords; termination or resignation of employment of Customer's designated users (v) that use of the Software is limited to use by employees and contractors of Customer for which applicable fees have been paid and that such use does not include the right to resell or sublicense such Software; (vi) to abide by all applicable local, state, national and international law and regulations, and not to use the Software for any purpose that is unlawful, not contemplated or prohibited by this Agreement (vii) to comply with all applicable export laws and regulations; (viii) that while the security of Customer's account will be maintained through the use of passwords, it is possible for Customer's account to be accessed by unauthorized third parties via communication between Customer and Philips using the Internet, other network communications, facilities, telephone, or any other electronic means.

## **10. INTELLECTUAL PROPERTY RIGHTS OF PHILIPS**

**10.1** Philips' Software is comprised of computer programming/formatting code, operating instructions, graphics, designs, information and/or other material (whether in written, graphical, or other form, collectively "Software Content") protected by copyright, trademark, trade secret, patent, or other intellectual property rights laws. The Software and Software Content is and shall remain the property of Philips and its licensors. Customer shall comply with all such laws and shall not assert any rights in the Software and Software Content, other than its right to access and otherwise use the Software as provided for in this Agreement. Customer may not modify, copy, provide to any third party, sell, transfer, or create derivative works of the Software or any Software Content, in whole or in part. Customer shall not decompile, disassemble, reverse engineer, or in any way derive source code from the Software. All right, title and interest in and to the Software, and all related software programs, computer source code, technology, information, documents, files and other materials, including all intellectual property and proprietary rights developed in connection with the Software, including but not limited to know-how, feedback, methodologies, and processes are and will remain with Philips. Except as otherwise specifically set forth in this Agreement, no rights or implied licenses in such intellectual property are granted to Customer by this Agreement or Customer's use of the Software.

## **11. INTELLECTUAL PROPERTY RIGHTS OF CUSTOMER**

**11.1** All rights, title and interest in and to Customer data input into the Software, including Customer's logos, trademarks, trade name, service marks, or any other graphics, designs or pictures ("Customer Data"), are and will remain with Customer. No rights or implied licenses in such Customer Data are granted to Philips by this Agreement. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use.

## **12. TRAINING**

**12.1** Philips will train Customer's designated employees who will use the Software, as mutually agreed between Philips and Customer, in the proper use of the Software. Philips provides one three (3) hour remote, or agreed upon on-site, session which includes the basic training for User to navigate through the InfoView Software, and create and edit records in each of the core modules. Users will learn how to extract information from InfoView through queries and basic reporting, and on the use of integrated time-saving tools. Training documents are also available for download within the Software. Except as otherwise provided herein, all other training requests shall be chargeable by Philips and not included with the License.

## **13. SOFTWARE WARRANTY/WARRANTY DISCLAIMER; AVAILABILITY OF ACCESS TO SYSTEM; SYSTEM REQUIREMENTS**

**13.1 SOFTWARE PRODUCT WARRANTY.** The Software will substantially conform to its technical specification set forth in the product description portion of the quotation ("Software Product Warranty"). Technical issues arising from the Subscription Host or customer's network or customer client devices are excluded from this warranty and shall not give rise to a warranty claim with respect to the Software. In the event of material breach of the Software Product Warranty, Philips shall, at its election, repair the non-conformance or replace the Software to fix the non-conformance. Violation of this condition shall be an event of default ("Philips Default") and customer shall have a right to terminate the Agreement. Thereafter, no further payments shall be required; however, further use would be prohibited. Legacy data entered in the Software shall be made available thereafter pursuant to Section 4.4 of this Agreement. This section states Customer's sole and exclusive remedy for Philips Default.

**13.2 WARRANTY DISCLAIMER.** THE SUBSCRIPTION HOST SERVICE IS PROVIDED "AS-IS" EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT UNDER SECTION 11.1, PHILIPS PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE SOFTWARE AND SUBSCRIPTION SERVICES. Philips shall not be liable for delays that are ordinary in the course of Internet use or arise as a result of Customer's Internet connection, network configuration, or equipment. Philips does not warrant the Hosted Service to be uninterrupted or error-free. Customer recognizes that the Software may not be available due to temporary delays caused by upgrading, modification, or standard maintenance of the Software, which activities Philips shall undertake to the extent possible during times calculated to be minimally disruptive to Customer and the Software. In this regard, Philips will use reasonable efforts to schedule upgrading, modification or standard maintenance of the Software at times outside of Monday through Friday, 7:00 a.m. through 7:00 p.m. CST. Philips' will use commercially reasonable efforts to inform Customer of any known or foreseeable disruptions to the availability of the Software. From time to time, Philips will release and make available to Customer

upgrades to its Software, and Customer will not have the option to access prior versions of the Software. Philips reserves the right to support and maintain only the most current version of the Software. Philips reserves the right to refuse assistance or to charge additional fees if Customer seeks assistance concerning the customer hardware, including the operating system therein, customer's network, or any other technical issue not arising from the Software or the Subscription Host service itself.

## **Exhibit 12**

### **MONITORING ANALYTICS & THERAPEUTIC CARE CAREVENT EVENT MANAGEMENT SYSTEM OR GUARDIAN SOFTWARE MAINTENANCE AGREEMENT EXHIBIT**

1. **SERVICES PROVIDED.** Commencing on the Effective Date and subject to the limitations below, Philips will provide Services listed on the quotation(s) for Covered System.

<b>Table 1 - Coverage Types</b>			
<b>Coverage Types</b>	<b>Telephone and Remote Support</b>	<b>Software Upgrades</b>	<b>Installation Services for Software Upgrades</b>
<b>CareEvent Software Maintenance Agreement Standard</b>	Included	Included	Included (Remotely)
<b>CareEvent Software Maintenance Agreement Basic</b>	Included	Included	Up to 2 per term (Remotely)
<b>Guardian Software Maintenance Agreement Standard</b>	Included	Included	Included (Remotely)

#### **1.2 Definitions.**

1.1.1 Software Version: Introduces major release with significant new features and functionality.

1.1.2 Software Update: Provides minor enhancements or improvements to performance, maintainability and serviceability.

1.1.3 Software Fix: Corrects Product Defect.

1.1.4 Covered System: CareEvent Event Management System or Guardian Software only

#### **2. TELEPHONE AND REMOTE SUPPORT.**

2.1 **Telephone Support.** Telephone and Remote Support coverage is included with all service agreements identified in this Exhibit. Technical and Clinical Telephone and Remote Support coverage services are available twenty-four hours per day, seven days per week including Philips recognized holidays.

2.2 **Remote Access & Diagnostics.** Philips may remotely access the Covered System to perform Services. Customer shall provide Philips access to the Covered System.

2.3 **InCenter Access.** Philips will provide access to Philips web based support tool for the System(s) covered under the Service Agreement.

#### **3. INTERFACE SUPPORT.** Philips supports the DICOM and HL7 communication to and from the Covered System, as they exist at the Covered System Site at the time of installation. In the case of upgrades, Philips shall provide the following software maintenance services:

3.1 If the Philips System, interoperability mapping engine, or biomedical device is upgraded to the latest version, Philips will restore the inbound / outbound communication to the pre-upgrade condition with like-for-like parameters.

3.2 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 Covered System 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 Covered System to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the Customer.

#### **4. SOFTWARE VERSIONS AND UPDATES.** If a software version or update is available for the Covered System, is included in the Agreement, 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:

4.1 Philips will provide software upgrades consisting of updates and new versions of, software for existing applications. Upgrades for MP5SC and SureSign monitors are not included with Guardian SMA. CareEvent SMA does not provide any upgrades for bedside monitors. Unless specified, third party software including, but not limited to operating system licenses, database software licenses, client access licenses, and anti-virus software is not included. Hardware updates and replacement are not included. Customer has no right to software, which has reached the published end of sale date. When required for the upgrade, Philips will provide operating system licenses and database software licenses (SQL) for the CareEvent application.

- 4.1.1 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 upgrades. Added functionality may require additional paid services (clinical and technical) to configure and support.
- 4.1.2 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.
- 4.2** To receive an upgrade:
- 4.2.1** Customer must be in compliance with all terms and conditions of this Exhibit and the Agreement, including the availability of Philips remote service capability and access to the Covered System by Philips personnel;
- 4.2.2** Customer must identify one Customer representative, in writing to Philips, that will manage and be responsible for Customer's selection and scheduling of upgrades installation under this Exhibit; and
- 4.2.3** The Covered System that will receive the version or update must meet the specifications of the upgrade. Customer shall provide the Covered System hardware or software necessary to meet such specifications.
- 4.3** Unless specifically included elsewhere in this agreement, software versions and updates do not include: functionality, applications, options or the like that were not purchased with the Covered System, including virus protection software, security patches, custom interface software, operating system software, software updates of third party software (e.g. Citrix). Philips shall have no responsibility to provide software versions or updates for minor software defects.
- 4.4** 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 Exhibit are subject to the terms and conditions of this Exhibit, the Agreement, and any license terms and conditions included in the purchase of the Covered System from Philips or later provided to Customer.
- 4.5** Philips will notify Customer if a new version update or upgrade is available. If the Customer chooses to receive an upgrade, then Customer must register for the upgrade by responding in writing within three (3) months of the date of Philips notice. If Philips does not receive such response from Customer within the three-month period, then Philips is under no obligation to provide such upgrade. If the Agreement expires after Philips notifies Customer that an upgrade is available, then Customer is entitled to receive the offered upgrade for three (3) month following such termination.
- 4.6** If Philips does not release a new version update or upgrade during any twenty-four (24) month period during the term of the Agreement and Customer does not have the latest available software version, then Philips will, at Customer's request, provide Customer with an upgrade to the latest available software version. If Philips does not receive such request from Customer prior to the expiration or termination of the Agreement, then Philips is under no obligation to provide such upgrade.
- 5. INSTALLATION SERVICES FOR SOFTWARE, VERSIONS AND UPDATES.** Philips will install the new versions updates or upgrades that Customer is entitled to receive under this Agreement remotely, at a time mutually agreed to by Philips and the Customer. Philips will provide clinical support during the installation that Customer is entitled to receive under the purchased coverage type. If Customer requires additional clinical services, then Philips will provide such services to Customer at Philips' then current labor rates. Clinical support at the installation will be provided in support of the new software version installation. Clinical support at the installation may be provided remotely.
- 6. CLINICAL SUPPORT OF THE INSTALLATION.** New version upgrade or update installation shall take place during standard coverage hours, Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays. Philips will perform the clinical support of the installation ("Go-Live Support") and clinical configuration of the upgraded software with like for like workflow functionality for new version and updates that Customer 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 the installation or clinical education (if purchased separately) will vary by type of upgrade. If Customer requires installations not provided in the Agreement's entitlements, installation support, or clinical services, or if services are not included with the agreement, then Philips will provide such installation or services to Customer at Philips then current labor and material rates.
- 7. TEST SYSTEM.** If applicable Philips will provide software for an off-line test system after first time commercial purchase of licenses and associated hardware. The Test System is not to be used in a production environment or with patients.



- 9 **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:
- 9.1 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.
  - 9.2 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.
  - 9.3 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.
- 10 **ANNUAL REVIEW**
- 10.1 If applicable, Philips and Customer will annually review the equipment and systems covered by the Agreement to match quantities of equipment and Covered Systems actually in use at Customer's site(s). Philips may update the contract to match this inventory, including adjusting price based on actual equipment and systems owned by the customer. Philips has no responsibility to Service systems not listed on the original or updated contract
- 11 **CUSTOMER RESPONSIBILITIES.**
- 11.1 **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 ensuring that proper backup procedures are in place as outlined in the System Installation and Reference Guides.
  - 11.2 **Remote access.** Customer must provide necessary 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 Exhibit. Customer waives all rights to services and service deliverables under this agreement unless PRS connectivity is enabled and maintained.
  - 11.3 **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.
  - 11.4 **Software version levels.** Customer must maintain the Covered System at a currently supported version to receive support under this Exhibit.
  - 11.5 **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.
  - 11.6 **Data reconstruction.** The Customer shall follow the recommended back-up processes as outlined in the Covered System Installation or Reference Guide. 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.
  - 11.7 **Intermediate Resolutions.** Customer shall implement any intermediate resolutions or workarounds as requested by Philips while Philips seeks a long-term resolution.
- 12 **SERVICE LIMITATIONS.**
- 12.1 **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.
  - 12.2 **Anti-Virus Statement.** Philips software is a computer-based medical product and, therefore, may be subject to attack by outside computer viruses. The software required to prevent attack by a computer virus must be constantly monitored and updated. Customer shall install and maintain anti-virus software in accordance with the Covered System Installation or Reference Guide. Philips shall use reasonable efforts to notify Customer if Philips becomes aware of any virus in the software licensed to Customer under this Agreement.

**12.3 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.

- 13 **EXCLUSIONS.** In addition to the Service Exclusions set forth in the Agreement, the following Service Exclusions apply to the applicable Monitoring Analytics and Therapeutic Care Services.

**13.1** Any combining of the Covered System with a non-qualified device. A non-qualified device is:

**13.1.1** 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).

**13.1.2** Any product supplied by Philips that has been modified by the Customer or any third party; and

**13.1.3** Any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements;

**13.1.4** 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.

**13.2** Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the Covered System.

**13.3** If the Covered System covered by this Exhibit is software only, then notwithstanding anything to the contrary in the Agreement or this Exhibit, hardware and parts are not included in the Services.

**13.4** Any network related problems.

**13.5** The cost of consumable materials, including batteries, software media, and cassettes.

### **Exhibit 13**

#### **MONITORING ANALYTICS & THERAPEUTIC CARE INTELLIBRIDGE ENTERPRISE SOFTWARE MAINTENANCE AGREEMENT EXHIBIT**

1. **SERVICES PROVIDED.** Commencing on the Effective Date and subject to the limitations below, Philips will provide Services listed on the quotation(s) for Covered System.

<b>Table 1 - Coverage Types</b>			
<b>Coverage Types</b>	<b>Telephone and Remote Support</b>	<b>Software Versions, Updates and Fixes</b>	<b>Installation Services for Software Upgrades</b>
<b>Intellibridge Enterprise Software Maintenance Agreement Standard</b>	Included	Included	Remote

**1.3 Definitions.**

**1.1.1** Software Version: Introduces major release with significant new features and functionality.

**1.1.2** Software Update: Provides minor enhancements or improvements to performance, maintainability and serviceability.

**1.1.3** Software Fix: Corrects Product Defect.

**1.1.4** Covered Systems: Intellibridge Enterprise (Monitoring Analytics Product Licenses)

2. **TELEPHONE AND REMOTE SUPPORT.**

**2.1 Telephone Support.** Telephone and Remote Support coverage is included with all service agreements identified in this Exhibit. Technical and Clinical Telephone and Remote Support coverage services are available twenty-four hours per day, seven days per week including Philips recognized holidays.

**2.2 Remote Access & Diagnostics.** Philips may remotely access the Covered System to perform Services. Customer shall provide Philips access to the Covered System.

**2.3 InCenter Access.** Philips will provide access to Philips web based support tool for the System(s) covered under the Service Agreement.

3. **INTERFACE SUPPORT.** Philips supports the DICOM and HL7 communication to and from the Covered System, as they exist at the Covered System Site at the time of installation. In the case of upgrades, Philips shall provide the following software maintenance services:

**3.1** If the Philips System, interoperability mapping engine, or biomedical device is upgraded to the latest version, Philips will restore the inbound / outbound communication to the pre-upgrade condition with like-for-like parameters.

**3.2** 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 Covered System 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 Covered System to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the Customer.

4. **SOFTWARE VERSIONS AND UPDATES.** If a software version or update is available for the Covered System, is included in the Agreement, 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:

**4.1** Philips will provide software upgrades consisting of updates and new versions of, software for existing applications. . Unless specified, third party software including, but not limited to operating system licenses, database software licenses, client access licenses, and anti-virus software is not included. Hardware updates and replacement are not included. Customer has no right to software, which has reached the published end of sale date.

**4.1.1 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 upgrades. Added functionality may require additional paid services to configure.

- 4.1.2 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.
- 4.2** To receive an upgrade:
- 4.2.1** Customer must comply with all terms and conditions of this Exhibit and the Agreement, including the availability of Philips remote service capability and access to the Covered System by Philips personnel;
- 4.2.2** Customer must identify one Customer representative, in writing to Philips, that will manage and be responsible for Customer's selection and scheduling of upgrades installation under this Exhibit; and
- 4.2.3** The Covered System that will receive the version or update must meet the specifications of the upgrade. Customer shall provide the Covered System hardware or software necessary to meet such specifications.
- 4.3** Unless specifically included elsewhere in this agreement, software versions and updates do not include: functionality, applications, options or the like that were not purchased with the Covered System, including virus protection software, security patches, custom interface software, operating system software, software updates of third party software (e.g. Citrix). Philips shall have no responsibility to provide software versions or updates for minor software defects.
- 4.4** 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 Exhibit are subject to the terms and conditions of this Exhibit, the Agreement, and any license terms and conditions included in the purchase of the Covered System from Philips or later provided to Customer.
- 4.5** Philips will notify Customer if a new version update or upgrade is available. If the Customer chooses to receive an upgrade, then Customer must register for the upgrade by responding in writing within three (3) months of the date of Philips notice. If Philips does not receive such response from Customer within the three-month period, then Philips is under no obligation to provide such upgrade. If the Agreement expires after Philips notifies Customer that an upgrade is available, then Customer is entitled to receive the offered upgrade for three (3) month following such termination.
- 4.6** If Philips does not release a new version update or upgrade during any twenty-four (24) month period during the term of the Agreement and Customer does not have the latest available software version, then Philips will, at Customer's request, provide Customer with an upgrade to the latest available software version. If Philips does not receive such request from Customer prior to the expiration or termination of the Agreement, then Philips is under no obligation to provide such upgrade.
- 5. INSTALLATION SERVICES FOR SOFTWARE, VERSIONS AND UPDATES.** Philips will install the new versions updates or upgrades that Customer is entitled to receive under this Agreement remotely, at a time mutually agreed to by Philips and the Customer. Philips will provide clinical support or clinical education during the installation that Customer is entitled to receive under the purchased coverage type. If Customer requires additional clinical services, then Philips will provide such services to Customer at Philips' then current labor rates. Clinical support at the installation will be provided in support of the new software version installation. Clinical support at the installation may be provided remotely.
- 6. CUSTOMER RESPONSIBILITIES.**
- 6.1 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 ensuring that proper backup procedures are in place as outlined in the System Installation and Reference Guides.
- 6.2 Remote access.** Customer must provide necessary 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 Exhibit. Customer waives all rights to services and service deliverables under this agreement unless PRS connectivity is enabled and maintained.
- 6.3 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.
- 6.4 Software version levels.** Customer must maintain the Covered System at a currently supported version to receive support under this Exhibit.
- 6.5 Hardware revision levels.** The Customer must maintain all associated Covered System Virtual machines, 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.
- 6.6 Data reconstruction.** The Customer shall follow the recommended back-up processes as outlined in the Covered System Installation or Reference Guide. 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.

**6.7 Intermediate Resolutions.** Customer shall implement any intermediate resolutions or workarounds as requested by Philips while Philips seeks a long-term resolution.

14 **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:

**14.1** 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.

**14.2** 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.

**14.3** 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.

15 **ANNUAL REVIEW**

**15.1** If applicable, Philips and Customer will annually review the equipment and systems covered by the Agreement to match quantities of equipment and Covered Systems actually in use at Customer's site(s). Philips may update the contract to match this inventory, including adjusting price based on actual equipment and systems owned by the customer. Philips has no responsibility to Service systems not listed on the original or updated contract

9. **SERVICE LIMITATIONS.**

**9.1 Software Restoration.** If the software fails and the supported application software requires restoration, then Philips will reinstall the application software, database software (if the SQL server is co-located with the IBE), 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.

**9.2 Anti-Virus Statement.** Philips software is a computer-based medical product and, therefore, may be subject to attack by outside computer viruses. The software required to prevent attack by a computer virus must be constantly monitored and updated. Customer shall install and maintain anti-virus software in accordance with the Covered System Installation or Reference Guide. Philips shall use reasonable efforts to notify Customer if Philips becomes aware of any virus in the software licensed to Customer under this Agreement.

**9.3 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.

10. **EXCLUSIONS.** In addition to the Service Exclusions set forth in the Agreement, the following Service Exclusions apply to the applicable Monitoring Analytics and Therapeutic Care Services.

**10.1** Any combining of the Covered System with a non-qualified device. A non-qualified device is:

**10.1.1** 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);

**10.1.2** Any product supplied by Philips that has been modified by the Customer or any third party; and

**10.1.3** Any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements;

**10.1.4** 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.

**10.2** Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the Covered System.

**10.3** If the Covered System covered by this Exhibit is software only, then notwithstanding anything to the contrary in the Agreement or this Exhibit, hardware and parts are not included in the Services.

**10.4** Any network related problems.

**10.5** The cost of consumable materials, including batteries, software media, and cassettes.

## **Exhibit 14**

### **ADDITIONAL TERMS AND CONDITIONS FOR DIGITAL PATHOLOGY EQUIPMENT SERVICING**

#### **1. Services.**

**1.1. Initial Inspection.** Within 90 days following the Start Date of service coverage, Philips will perform the first Planned Maintenance (PM) visit, and inspect each Covered System not previously serviced by Philips and notify Customer of any Covered System that does not meet manufacturers' specifications. Philips will provide Customer a written estimate for repairs necessary to bring any of the Covered System within manufacturers' specifications. Upon Customer's request, Philips will provide necessary repairs at Philips' then current labor rates. If Customer elects not to have such Covered System repaired, Philips may remove such Covered System from coverage under the Quotation by providing written notice to Customer.

#### **1.2. Maintenance Services**

**1.2.1. Planned Maintenance Service (PM).** Philips will provide routine planned preventive maintenance services, including general Covered System inspection and Covered System basic remote monitoring (in order to identify potential technical issues with the Covered System, conditioned upon Customer meeting its related obligations in this Exhibit). Philips will provide Customer a planned maintenance schedule for the Covered System(s), such Planned Maintenance will be executed during the Hours of Coverage (as defined in the Quotation), at a time that is mutually agreed upon. In the event that Planned Maintenance or remote monitoring identifies the need for additional Corrective Maintenance Services, Philips will work with the Customer to initiate a service action to correct the issue, the coverage for such Service is defined in the Quotation.

**1.2.2. Corrective Maintenance Service (CM).** To the extent indicated in the Quotation, Philips will provide corrective maintenance services, including break fix repair activities due to Covered System malfunctioning and provide replacement parts, as necessary to repair the Covered System.

**1.2.3. Service Requests.** Customer can log a Service request through e-mail and/or web-form (24X7), or by telephone through the Customer Helpdesk.

**1.2.4. Remote Service.** Where possible all Planned and Corrective Maintenance Service will be performed remotely.

#### **1.3 Customer Service**

**1.3.1 Telephone Helpdesk Support.** All Customers may call the Helpdesk for basic support regarding the use and maintenance of the Covered System or request service during business hours.

**1.3.2 Technical Phone Support.** Technical Phone Support is as listed in the Quotation. Philips provides technical phone support via its Customer Care Center (CCC) and Remote Support Center (RSC) to provide remote expert assistance in diagnosis, trouble shooting and resolution.

**1.3. Parts.** Spare parts for the UFS (Scanner), display, and the IT hardware items supplied by Philips are covered to the extent set out in the Quotation. Replacement parts provided by Philips may be certified refurbished. All components used are subject to Philips' inspection and quality control procedures. Parts removed for replacement, any not used spare part, become the property of Philips and Philips will remove parts from the Site. Customer shall make such parts available and return them to Philips or Philips' subcontractor employees performing the Services. Failure by Customer to return the spare part will result in additional invoicing by Philips of the spare part value. Unless priority delivery is included in the Quotation, all replacement parts will be shipped using Philips standard delivery, subject to availability. Other delivery arrangements will be at Customer's request and expense.

#### **1.4. Supplemental Services.**

**1.5.2 Operations Management Suite (OMS).** If included in the Quotation, Philips shall implement and activate an OMS account for customer. OMS enables system log-file analysis and reporting features.

**1.5.3 Software Updates and Fixes.** If included in the Quotation, Philips will install system software updates made available by Philips or the Original Equipment Manufacturer (OEM) for the Covered System(s). Software updates mean revisions to Philips or OEM proprietary system software that address essential Covered System performance issues without extending functional capabilities and without hardware changes.

- 1.5. **Field Change Orders (FCO).** FCO's are actions to correct serious defects in Philips equipment provided at no charge to all Customers. Irrespective of the offering in the Quotation, Philips will always provide Customer with mandatory FCO's as and when required (provided Customer provides access to the Covered System).
- 1.6. **Education Services.** Philips can provide, on request, remote product training and/or onsite refresher product training or onsite technical training for the amount of hours and number of people, and location, as and if set out in the Quotation.
- 1.7. **IT server Service.** Philips will provide, through its subcontractors, IT server service on the servers set out in the Quotation (if any). Philips will be the first point of contact for Customer for such IT server service requests.
2. **Service Coverage.** Philips will provide the Service elements listed in the Quotation ("**Service Coverage**"). Customer may request service outside the Service Coverage (e.g. service outside the hours of coverage, service or repair parts that is not otherwise included in this Quotation) subject to the availability of personnel and repair parts, Philips will provide such additional service and repair parts and invoice Customer at Philips' then current standard rates for labor and Philips' then current list price for parts as quoted on request.
  - 2.1. **Labor.** Labor for Corrective Maintenance is as set forth in the Quotation.
  - 2.2. **Travel.** Unless indicated otherwise in the Quotation travel hours necessary to perform the Services are included.
  - 2.3. **Hours of Coverage.** Philips will provide the Planned and Corrective Maintenance services during the service window hours as indicated in the Quotation excluding Philips observed public holidays. If the Quotation does not mention the hours of coverage, normal coverage would be Business Hours, Mo-Fri, 9am-5pm, Covered System local time, excluding holidays.
3. **Exclusions.** The Services do not include:
  - 3.1. maintaining or repairing third-party products (unless explicitly specified in the Quotation);
  - 3.2. maintenance or repair, including the cost thereof, required due to operating the Covered System outside of recommended environmental specifications described in the Covered System documentation;
  - 3.3. remediating or repairing any harm caused by computer viruses, Trojan horses, worms, back doors, time bombs, drop dead devices, or other computer programming code or routines that disable, damage, impair, detrimentally interfere with, surreptitiously intercept or expropriate any system, computer hard- or software, data, information or telecommunications equipment or to permit unauthorized access
  - 3.4. any service necessary due to: (i) a design, specification or instruction provided by Customer or Customer representative; (ii) the failure of anyone to comply with Philips' written instructions or recommendations; (iii) any combining of the Equipment with other manufacturers product or software other than those recommended by Philips; (iv) any alteration or improper storage, handling, use or maintenance of the Equipment, including any components, e.g. scanner lens, camera, gripper, by anyone other than Philips' subcontractor or Philips; (v) damage caused by an external source, regardless of nature; (vi) any removal or relocation of the Equipment; or (vii) neglect or misuse of, or accident with the Equipment, including any components, e.g. scanner lens, camera, gripper;
  - 3.5. resolving issues resulting from changes (not made by Philips) (i) in Active Directory settings of the IMS or (ii) issues resulting from changes due to patch management by Customer (iii) issues resulting from anti-virus products used by Customer or anti-virus management by Customer;
  - 3.6. if the Covered System breaks down/is interrupted due to a customer triggered IT change service levels and response times will not apply until the Covered System is in good working order again. Any extra costs incurred by Philips for adjusting the Covered System to the Customer initiated IT changes will be billed to Customer.
4. **Customer Responsibilities.** During the term of this Agreement, Customer shall:
  - 4.1. Provide Philips with broadband internet Wi-Fi access for business purposes;
  - 4.2. provide Philips and its subcontractor's service personnel with full and free access to the Covered System at the scheduled service time;
  - 4.3. if applicable, provide invitation letters and support visa application and travel requirements in case necessary;
  - 4.4. timely return defective spare parts to Philips in accordance with in accordance with the terms of this Agreement;
  - 4.5. maintain the level of competency of all staff working on the Covered System covered under this Agreement.
  - 4.6. Provide Philips, at each Site, with a dedicated high speed broadband internet connection suitable to establish a remote connection to the Covered System and facilitate the realization of the required remote infrastructure, by:

- 4.6.1. supporting the installation of a Philips approved router (or a Customer-owned router acceptable for Philips) for connection to the Covered System and Customer network, if the router is provided by Philips, it remains Philips property and is only provided during the term of this Agreement;
- 4.6.2. maintaining a secure location for hardware to connect Covered System to the Philips Remote Service Data Center (PRSDC);
- 4.6.3. providing and maintaining a free IP address within the Site network to be used to connect the Covered System to the Customer's network;
- 4.6.4. maintaining the established connection throughout the Term (including restraining from any temporary disconnection or disabling of such connection (e.g. by switching off the server)); and
- 4.6.5. facilitating the reconnection by Philips in case of any temporary disconnection occurs;

If Customer fails to provide the access described in this section 4.2 and so the Covered System is not connected to the PRSDC (including any temporary disconnection), Customer waives its rights to Services under this Agreement and any associated obligations.

- 5. **Contract Administration.** The Parties will list all Covered System(s) serviced by Philips in the Quotation and on an itemized inventory list to register and keep up-to-date each Covered System and its associated coverage level during the Term. Customer may request the addition of additional Covered System(s) to such inventory list by contacting Philips. Customer and Philips will agree on a mutually-agreeable price and contract start date. Such equipment will be added to this Agreement after receipt of a signed Quotation.
- 6. **Covered System Data.** Notwithstanding any other term of the Agreement, Customer agrees that Philips may anonymize or aggregate log files, device parameters and other signals collected from equipment used by Customer and associated with Customer ("Anonymized Equipment Data") and use and disclose Anonymized Equipment Data for Philips' own 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 research, 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 Anonymized Equipment Data, Philips will not associate such data with Customer's identity or the Personal Data of Customer's patients, consumers, or employees.
- 7. **Glissando scanner.** For Customer purchasing a Glissando Scanner as noted on the Quotation the following additional terms shall apply. In the event of any conflict between the terms of this Section 7. and the previous terms in the exhibit this section 7. shall control for Customers purchasing the Glissando Scanner. The Glissando Scanner is a third party product, distributed by Philips pursuant to its agreement with Objective Imaging, which is the legal manufacturer ("Manufacturer") of the Glissando Scanner. The Extended Warranty model for the Glissando Scanner is materially different than that of Philips manufactured equipment, Customer agrees to the following terms for the Glissando scanner Extended Warranty.
  - 7.1. **Planned Maintenance** Customer will be responsible for cleaning the accessible parts of the Glissando Scanner. Customer will be trained onsite by a Philips-certified engineer during initial installation or by a Philips-certified Applications Specialist during initial product training on maintenance of the Glissando Scanner. Customer will be responsible for cleaning the accessible parts of the Glissando Scanner.
  - 7.2. **Minor Repair via Service Kit.** Customer will be responsible for minor repair and maintenance of the Glissando Scanner via the Service Kit. Upon initial installation, Philips will make a Service Kit with replaceable spare parts ("Service Kit") available to Customer. In case Customer used a replaceable part and wishes to replenish consumed parts from the Service Kit, Customer will send the replaced parts back to Philips. Philips will replenish the required part in the Service Kit during applicable warranty period at no cost.
  - 7.3. **Major Repair(s) / Corrective Maintenance.** In case a Philips certified engineer has established that a Glissando Scanner cannot be remotely repaired or repaired by Customer through the Service Kit, and the Glissando Scanner has to undergo a Major Repair, Customer will package and send the defective Glissando Scanner to Philips or Manufacturer for repair, in accordance with Philips' instructions. Philips will temporarily provide the Customer a loaner Products. Customer shall install the loaner Products – remotely guided by a Philips-certified engineer if needed. Once the defective Product is repaired, it will be shipped back to Customer. Upon receipt of the repaired Glissando Scanner the Customer shall replace the loaner



Glissando Scanner by installing the repaired Glissando Scanner, and packing and shipping back the loaner Glissando Scanner as per the instructions of Philips. **The remedies set forth in this Section 7. are the sole and exclusive remedies under the Extended Warranty of the Glissando Scanner, subject to the Warranty Provisions under the purchase contract under which Customer purchased the Glissando Scanner.**

**7.3.1.** All returned items must be in their original box or crating and must include all packing material, manuals, and accessories. Please take care to package your return carefully. Philips is not responsible for damage or a lost product(s) caused by shipping. Any damage or subsequent failure of the hardware product related to inappropriate packaging may result in additional charges for the repair of the product.

**7.4. No onsite repair or maintenance.** Customer acknowledges that by purchasing an extended warranty for the Glissando Scanner, the above process is Customer's exclusive remedy for a Glissando Scanner which is not performing in compliance with the performance specifications, as set out in the documentation accompanying the product. Philips nor the Manufacturer will be providing any onsite repair or maintenance of the Glissando Scanner. In the event Philips does agree to provide any onsite services for the Glissando Scanner it shall be at standard Glissando Scanner Philips' standard service rates including additional fees for after hours rates.

**7.5. Software Updates** mentioned under (i) and (ii) below are provided free of charge during the extended warranty period. The ones mentioned under (iii) are excluded and need to be ordered and paid for separately. Updates shall be provided in the following forms:

(i) Patches and firmware Updates. The frequency of patch releases will be dictated by the severity of the issues being addressed in the patch. Patches and firmware updates will be installed remotely via Philips' remote service connection.

(ii) Minor releases. Minor releases are expected to occur every six (6) months. A minor release will typically consist of bug fixes, usability enhancements and minor feature enhancements Manufacturer will support backward compatibility for up to three (3) minor releases. If a Customer exceeds the three (3) minor release backward compatibility threshold, the Customer will need to engage Philips' support to arrange for a custom upgrade. Upgrades are not included and will be charged to the Customer.

(iii) Major releases. Major releases are planned to occur in the twelve (12) month timeframe. A major release typically consists of a new product or significant new feature. Manufacturer guarantees backwards compatibility for up to two major releases. If a Customer exceeds the two (2) major release backward compatibility threshold, the Customer will need to engage Philips' support to arrange for a custom upgrade. Upgrades are not included and will be charged to the Customer.

**7.6. Assignment.** Should the agreement between Philips and Manufacturer expire or terminate, and Philips would no longer be entitled and able to provide (Extended) Warranty services for the Product, Customer agrees that its extended warranty agreement with Philips with regard to the Product may be assigned to Manufacturer or its service provider without Customer's prior approval.