

## Philips Standard Terms and Conditions of Sale (Rev. Q)

The products and services listed in the quotation are offered by Philips Electronics Ltd. doing business as "Philips Canada" ("Philips") only under the terms and conditions described below (the "Terms and Conditions of Sale" or "Agreement").

### 1. Prices; Taxes

- 1.1 The purchase price stated in the quotation does not include applicable sales, excise, use, other taxes, or government surcharges in effect or later levied. Customer shall provide Philips with appropriate valid exemption certificate reasonably in advance of the date the product is available for delivery, otherwise, Philips shall invoice Customer for those taxes, as well as any government surcharges, and Customer shall pay those taxes in accordance with the terms of the invoice. Government surcharges are non-exempt under law. Customer is defined as a legal entity its affiliates and or subsidiaries who purchase product(s), and take title of the purchased product(s) from Philips.

### 2. Cancellation

- 2.1 Philips' cancellation policies are set forth in the applicable Product Specific Schedule attached to these Terms and Conditions of Sale.

### 3. Payment Terms

- 3.1 Unless otherwise specified in the quotation, Philips will invoice Customer, and Customer will pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the applicable Product Specific Schedule attached to these Terms and Conditions of Sale.
- 3.2 Philips may make partial or early shipments and Customer will pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the quotation.
- 3.3 Orders are subject to Philips' on-going credit review and approval.
- 3.4 Customer shall pay interest on any amount not paid when due at the annual rate of twelve percent (12%) or at the maximum rate permitted by applicable law, whichever is lower. If Customer fails to pay any amount when due, in addition to any other rights or remedies available to Philips at law or in equity, Philips may discontinue the performance of services, discontinue the delivery of the product, or deduct the unpaid amount from any amounts otherwise owed to Customer by Philips under any agreement with Customer. In any action initiated to enforce the terms of the quotation following a Customer default or product cancellation under an order arising from the quotation, Philips shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' and other legal fees and costs, in connection with such action.
- 3.5 Payment Methods. Payments may be made by check, ACH or wire. Philips does not accept transaction fees for wire transfers.
- 3.6 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.
- 3.7 All dollar amounts referred to in this Agreement are stated in Canadian dollars.

### 4. Trade - In

- 4.1 If Customer will be trading-in any equipment ("Trade-In"), then:
  - 4.1.1 Customer represents and warrants that: (i) Customer has good and marketable title to the Trade-In as of the date of the Quotation and will have good and marketable title when Philips removes the Trade-in from Customer's site (the "Removal Date"); and (ii) Customer has all necessary rights and permissions to transfer all software and software licenses associated with, installed in, and/or embedded in the Trade-In to Philips as of the Removal Date.
  - 4.1.2 Removal of the Trade-In from Customer's site shall occur no later than the date Philips makes the new product available for first patient use, unless otherwise agreed in writing

- between Philips and the Customer. Title to the Trade-in shall pass from Customer to Philips on the Removal Date or at installation of the purchased system, whichever occurs first. After title to the Trade-In passes to Philips, Customer shall not use the Trade-In.
- 4.1.3 Notwithstanding anything to the contrary in any other agreement between the parties, Customer represents and warrants that Customer has removed or de-identified all Personal Health Information ("PHI") and any other personal information from the Trade-In equipment as of the date the equipment is removed and will otherwise comply with all applicable privacy laws. To the extent Customer has not done so, Customer agrees to reimburse Philips for any out-of-pocket costs Philips incurs to remove or de-identify PHI or any other personal information from the Trade-In.
- 4.1.4 Customer will ensure that the Trade-In is clean and sanitized and that all potentially infected materials and biological fluids are removed prior to its de-installation and removal.
- 4.1.5 If (a) the condition of the Trade-In is not substantially the same when Philips removes the Trade-In (ordinary wear and tear excepted) as it was when Philips quoted the Trade-In value; or, (b) Customer delays the removal of the Trade-In, then Philips may reduce the price quoted for such Trade-In or cancel the Trade-In and Customer will pay the adjustment amount within thirty (30) days from the date of invoice.
- 4.1.6 If Philips does not receive timely possession of the Trade-In, Philips will, at its option, either charge Customer the amount of the Trade-in allowance and cancel the trade-in, re-value the trade-in allowance accordingly, and/or charge Customer a rental fee of 10% of the trade-in allowance per month or partial month until the trade-in is available for removal. Customer will pay any invoiced allowance adjustment or rental fee within thirty (30) days from the invoice date.
- 4.1.7 If Customer does not allow Philips to remove the Trade-In, then Philips may invoice Customer for the Trade-In value plus any promotional dollars relating to the Trade-In. Customer will pay invoice within thirty (30) days from the invoice date.
- 4.1.8 Evidence that Customer intends to trade in an asset as part of the purchase or lease of any product(s) shall be in the form of, but not limited to: (a) receiving a trade in quote and/or authorization from Philips on the value of the asset to be traded in; (b) providing Philips with serial numbers of assets to be traded in; and/or, (c) providing Philips with a de-installation date to remove an existing asset in order to install Philips quoted equipment.
- 4.1.9 Customer is responsible for all plumbing necessary to properly drain coolant from chiller system and cap the lines. Prior to the Removal Date, Customer shall remove all equipment that is not being de-installed from the room.

## **5. Leases**

- 5.1 If Customer desires to convert the purchase of any product to a lease, Customer will arrange for the lease agreement and all other related documentation to be reviewed and approved by Philips not later than ninety (90) days prior to the date of the availability for delivery of major components of the product. The Customer is responsible for converting the transaction to a lease, and is required to secure the leasing company's approval of all of these Terms and Conditions of Sale. No product will be delivered to the Customer until Philips has received copies of the fully executed lease documents and has approved the same. For any lease, if the lease doesn't fund then (i) Customer guarantees the payment of all monies due or that may become due under this agreement (ii) Philips may convert the lease back to a purchase and invoice Customer accordingly and (iii) Customer will pay all such invoiced amounts per the invoice terms.

## **6. Security Interest**

- 6.1 By signing the quotation or issuing a purchase order for the products described, Customer hereby grants to Philips a purchase money security interest under Ontario law in the products until all payments have been made. Philips may file a financing statement for such security interest and Customer shall sign any financing statements or other documents necessary to perfect Philips' security interests in the products. Where permitted by applicable law, Customer's

signature on the quotation or on a purchase order issued as a result of the quotation gives Philips the right to sign on Customer's behalf and file any financing statement or other documents to perfect Philips' security interest in the product.

## **7. Shipment and Risk of Loss**

- 7.1 Delivery terms are stated in the applicable Product Specific Schedule attached to these Terms and Conditions of Sale.
- 7.2 Except as otherwise stated in the applicable Product Specific Schedule, title to any product (excluding software), and risk of loss or damage shall pass to the Customer F.O.B. destination. Customer shall obtain and pay for insurance covering such risks at destination.
- 7.3 Philips will use reasonable efforts to meet delivery dates confirmed by Philips in writing, but Philips shall not be liable to Customer for any damages arising from any delivery delays which were beyond the control of Philips including, for example, delays caused by manufacturer's ship holds or delays.

## **8. Site Preparation and Installation**

- 8.1 Site Access. Customer shall provide Philips full and free access to the installation site and a suitable safe space for the storage of the products before installation. Customer shall ensure, at no charge to Philips, that there are no obstacles preventing Philips from moving the product from the entrance of the Customer's premises to the installation site.
- 8.2 Site Preparation and Installation.
  - 8.2.1 Customer Responsibility. Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, installation of safety switch or breaker, and restoration work. The products will be installed during normal working hours. Except where Philips has agreed in writing to provide construction services for a fee pursuant to a construction agreement and scope of work signed by Customer, Customer shall be responsible, at its expense, for the preparation of the installation site where the product will be installed including any required structural alterations. Customer shall provide any and all plumbing, carpentry work, conduit, wiring including communications and/or computer wiring, network equipment, power supply, surge suppression and power conditioning (except to the extent they are expressly included in the quotation), fire protection and environmental controls, ground fault and isolation system, and other fixtures and utilities required to properly attach, install, and use the product. Site preparation shall be in compliance with all applicable laws, including all safety, electrical, and building codes relevant to the product and its installation and use. The sufficiency of any installation site plans shall be the responsibility of Customer. Customer, at its expense, shall obtain all permits and licenses required by federal, state, provincial, or local authorities in connection with the installation and operation of the product, including any certificate of need and zoning variances.
  - 8.2.2 Unless otherwise specified by Philips, Customer shall advise Philips of site conditions at or near the location where equipment is installed five (5) days prior to the mutually agreed upon delivery date. The update shall include but not limited to the following:
    - 8.2.2.1 (i) Hazardous Materials. Customer is responsible for ensuring that asbestos and other hazardous materials and conditions that could adversely affect the installation or pose a health or safety risk to Philips' personnel are corrected and hazardous materials removed, and that the site is fully prepared and available to Philips before installation work begins. Customer represents and warrants that an asbestos survey of the facility has been performed to determine the presence, location, quantity and condition of asbestos containing materials (ACM) or presumed asbestos containing materials (PACM) at the facility; and the facility and/or work area does not contain any ACM or PACM or the facility and/or work area contains ACM or PACM, such material has been encapsulated or enclosed in accordance with applicable laws and the work will not disturb any such materials. (ii) Construction. All construction work in technical and operator room(s) is finished including but not limited to the responsibilities identified in 8.2.1.

8.2.3 Delays. If site preparation is not on schedule five (5) days prior to the mutually agreed upon delivery date or as otherwise specified by Philips, Philips and Customer will conduct an evaluation of the site and establish a revised installation schedule. In the event that installation is delayed by Customer within five (5) days prior to the mutually agreed upon delivery date or after the start of installation, Customer will be responsible for: (i) storage and fees for the preservation and life support of the equipment to ensure high quality and long life of system(s); and, (ii) Costs associated with rescheduling and coordination for all resources and third party providers, including travel costs for split delivery and installation directly related to the delay in installation. If during installation Philips discovers hazardous materials (i.e. asbestos, etc.) all installation activities will stop and Customer will remove and dispose of the hazardous materials. Once the issue giving rise to the delay has been rectified and the site meets the criteria set forth in this Section 8, Philips and Customer will conduct an evaluation of the site and establish a new installation schedule.

8.2.4 Philips Responsibility. Unless additional professional services are purchased separately (including turnkey) and/or professional services are set forth in a statement of work or project implementation plan under the agreement for the product purchased hereunder upon delivery, Philips will unpack the product (if unpacking is required) and connect the product to a safety switch or breaker that has been installed by the Customer, and calibrate and test the product.

8.3 PHILIPS MAKES NO WARRANTY AND ASSUMES NO LIABILITY FOR THE FITNESS OR ADEQUACY OF THE SITE IN WHICH THE PRODUCT IS TO BE INSTALLED OR USED. EXCEPT OTHERWISE PROHIBITED BY APPLICABLE LAW, CUSTOMER SHALL INDEMNIFY DEFEND, AND HOLD HARMLESS PHILIPS AND ITS AFFILIATES AGAINST ANY COSTS, LOSSES, EXPENSES, PHYSICAL PROPERTY DAMAGE, AND/OR THIRD PARTY CLAIMS, INCLUDING SUBROGATION CLAIMS, COLLECTIVELY ALL THE FOREGOING ARISING FROM OR RELATING TO CUSTOMER'S SITE PREPARATION RESPONSIBILITIES.

8.4 Local Labour. If local labour conditions, including but not limited to a requirement to utilize union labour, require the use of non-Philips employees to participate in the installation of the product, then such participation of non-Philips employees shall be at Customer's expense. In such case, Philips will provide engineering supervision during the installation.

8.5 Remote Services Network ("RSN"). Customer will (a) provide Philips with a secure location at Customer's premises to store one Philips remote services network router and provide full and free access to this router, (or a Customer-owned router acceptable to Philips) for connection to the equipment and to Customer's network; or (b) provide Philips with outbound internet access over SSL; at all times during the warranty period provide full and free access to the equipment and the Customer network for Philips' use in remote servicing of the product, remote assistance to personnel that operate the products, updating the products software, transmitting automated status notifications from the product and regular uploading of products data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into services). Customer's failure to provide such access will constitute Customer's waiver of the scheduled planned maintenance service and will void support or warranty coverage of product malfunctions until such time as planned maintenance service is completed or RSN access is provided. Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the products.

## **9. Product Warranty**

9.1 (a) If a separate product warranty prints as part of the quotation, that product warranty applies to your purchase and is incorporated herein; if Philips confirms in the quotation or in documentation that is provided to the Customer with the quotation that there is no warranty for the Product, then the Product is provided to Customer without any warranty; otherwise Section 9.2-9.7 shall apply unless the product is identified under 9.1 (b). (b) For Monitoring and Analytics (MA) & Therapeutic Care (TC) Portfolio, Emergency Care & Resuscitation Portfolio, (ECR) Capital and Monitoring and Analytics (MA) & Medical Supplies and Consumables (MS) Portfolio, the product warranty document can be found at:

<http://www.usa.philips.com/healthcare/about/terms-conditions> or can be provided upon request. Philips may amend and update the product warranty terms without Customer's consent at any time by posting a revised version on the foregoing website. Customer confirms that it has read and agreed to the applicable product warranty terms.

- 9.2 Hardware/Systems. Philips warrants to Customer that the Philips equipment (including its operating software) will perform in substantial compliance with its performance specifications, in the documentation accompanying the products, for a period of twelve (12) months beginning upon availability for first patient use.
- 9.3 Stand-alone Licensed Software. For a period of ninety (90) days from the date Philips makes Stand-alone Licensed Software available for first patient use, such Stand-alone Licensed Software shall substantially conform to the technical user manual that ships with the Stand-alone Licensed Software. "Stand-alone Licensed Software" means sales of Licensed Software without a contemporaneous purchase of a server for the Licensed Software. If Philips is not the installer of the Stand-alone Licensed Software, the foregoing warranty period shall commence upon shipment.
- 9.4 If the start of the installation is delayed for any reason beyond the control of Philips for more than thirty (30) days following the date that Philips notifies Customer that the major components of the product are available for delivery, the warranty period begins on the thirty-first (31<sup>st</sup>) day following that date.
- 9.5 Philips' sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips' option, to the repair or the replacement of the product or a portion thereof within thirty (30) days after receipt of written notice of such material breach from Customer ("Product Warranty Cure Period") or, upon expiration of the Product Warranty Cure Period, to a refund of a portion of the purchase price paid by the Customer, upon Customer's request. Any refund will be paid, to the Customer when the product is returned to Philips. Warranty service outside of normal working hours (i.e. 8:00 AM - 5:00 PM, Monday through Friday, excluding Philips' observed holidays), will be subject to payment by Customer at Philips' standard service rates.
- 9.6 This warranty is subject to the following conditions: the product: (a) is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips); (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips' written instructions and for the purpose for which the products were intended; and, (c) is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the product and Customer is to notify Philips immediately if the product at any time fails to meet its printed performance specifications. Philips' obligations under any product warranty do not apply to any product defects resulting from improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software running in connection with the Licensed Software without prior approval by Philips; use or operation of the product other than in accordance with Philips' applicable product specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or viruses or similar software interference resulting from connection of the product to a network. Philips does not provide a warranty for any third party products furnished to Customer by Philips under the quotation; however, Philips shall use reasonable efforts to extend to Customer the third party warranty for the product. The obligations of Philips described herein and in the applicable product-specific warranty document are Philips' only obligations and Customer's sole and exclusive remedy for a breach of a product warranty.
- 9.7 THE WARRANTIES SET FORTH HEREIN AND IN PHILIPS' WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THE QUOTATION, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING,

WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Philips may use refurbished parts in the manufacture of the products, which are subject to the same quality control procedures and warranties as for new products.

#### **10. Philips Proprietary Service Materials**

10.1 Any Philips maintenance or service software and documentation provided with the product and/or located at Customer's premises is intended solely to assist Philips and its authorized agents to install and to test the products or to assist Philips and its authorized agents to maintain and to service the products under warranty or a separate support agreement with Customer. Customer agrees to restrict access to such software and documentation to Philips' employees and those of Philips' authorized agents only and to permit Philips to remove its Proprietary Service Materials upon request.

#### **11. Intellectual Property Indemnification**

11.1 Philips shall indemnify, defend, and hold harmless Customer against any claim that a Philips product provided in the quotation 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; and (c) gives Philips sole control of the defense or settlement of the claim.

11.2 The provisions of this section shall not apply if the product is sold or transferred by Customer.

11.3 11.2 If (a) a Philips product is found or believed by Philips to infringe a valid patent or copyright; or, (b) Customer has been enjoined from using the Philips product pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option: (i) procure the right for Customer to use the product; (ii) replace or modify the product to avoid infringement; or (iii) refund to Customer a portion of the product purchase price upon the return of the original product. 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 product by Customer or its agents; use of the product other than in accordance with the product specifications or applicable written product instructions; use of the product with any other product not sold by Philips to customer and the Philips product in and of itself is not infringing; if infringement would have been avoided by the use of a current unaltered release of the products, provided that, Philips makes such current unaltered release available to customer at no additional charge; or use of the Philips Product 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 under 11.2(i)-(iii) above. The terms in this section state Philips' entire obligation and liability for claims of infringement, and Customer's sole remedy in the event of a claim of infringement.

#### **12. Limitation of Liability**

12.1 THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING OR RELATING TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM A PRODUCT, LICENSED SOFTWARE, AND/OR SERVICE IS LIMITED TO THE PRICE PAID HEREUNDER FOR THE PRODUCT, LICENSED SOFTWARE, OR SERVICE GIVING RISE TO THE LIABILITY.

12.2 THIS LIMITATION SHALL NOT APPLY TO:

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

- 12.2.2 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;
- 12.2.3 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; and,
- 12.2.4 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 SHALL CONSTITUTE DIRECT DAMAGES.

### **13. Disclaimer**

- 13.1 IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

### **14. Confidentiality**

- 14.1 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, and the quotation and its terms, including the pricing terms under which Customer has agreed to purchase the products. 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 the quotation. 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 Sale 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 Canadian freedom of information 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.

### **15. Compliance with Laws & Privacy**

- 15.1 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 affirmative action, fair employment practices, Health Canada, and medical insurance fraud and abuse including OHIP and similar provincial insurance programs. Each party represents and warrants that it has all of the rights and authorizations as may be required at law or otherwise, including without limitation any authorizations or permissions as may be required by Health Canada or under any

applicable guidelines, rules, laws, or regulations with respect to procurement or the awarding of contracts applicable to the Customer, to enter into this Agreement.

15.2 In the course of providing the Services to Customer, the Customer acknowledges that it may be necessary in limited circumstances for Philips to store or grant access to Personal Data to its affiliates and/or the original equipment manufacturer (OEM) located outside of Canada (including, for example, the United States or Europe). Unless otherwise agreed to in writing by the parties, such disclosure will be limited to exceptional circumstances where it is necessary for the purposes of installing, implementing, maintaining, repairing, troubleshooting, or upgrading the Licensed Software or Product, where data recovery assistance from the OEM is necessary, or where the storage or access is required to meet the necessary requirements of the Customer's operation. Any such disclosure will be limited to temporary access and storage for the minimum time necessary for the purposes and only as required to meet the requirements of this Agreement and in accordance with all applicable laws including all applicable privacy laws. Customer further acknowledges and agrees that all telephone conversations between Philips and Customer or Philips' affiliates and Customer may, in Philips' discretion, be recorded. In this Agreement "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).

#### **16. Excluded Provider**

16.1 As of the date of the sale of this product, Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or provincial health care program, nor have they been convicted of any health care related crime for the products and services provided under these Terms and Conditions of Sale (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing services hereunder have become an Excluded Provider under a federal or provincial healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the Parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for products and services not yet shipped or rendered prior to a date of exclusion.

**16. Statements of Work (SOWs)**. If applicable under a Product Specific Schedule, the Customer may retain Philips Canada to provide certain services and/or deliverables in connection with the purchase of one or more Products hereunder as specified in a SOW issued hereunder and signed by authorized representatives of the relevant parties. Any such SOW will further detail and govern the provision of services and/or deliverables by Philips Canada to the Customer under this Agreement. Each SOW will be prepared jointly by the relevant parties and shall specify the scope and nature of the services and/or deliverables to be provided, the parties' responsibilities, the Customer's site, and any other terms and conditions related to the obligations to be performed. Each SOW will be deemed to incorporate by reference the terms and conditions of the Agreement unless the applicable SOW expressly provides otherwise. In the event of any conflict between the Philips Standard Terms and Conditions of Sale, the applicable Product Specific Schedule, and any SOW, the Product Specific Schedule, followed by the Philips Standard Terms and Conditions of Sale will govern to the extent of the conflict or inconsistency, unless expressly stated otherwise in the SOW.

#### **17. General Terms**

The following additional terms shall be applicable to the purchase of a product:

17.1 **Force Majeure**. 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 18.

**17.2 Bankruptcy.** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Philips may cancel any unfulfilled obligations, or suspend performance; however, Customer's financial obligations to Philips shall remain in effect.

**17.3 Assignment.** Customer may not assign any rights or obligations in connection with the transactions contemplated by the quotation without the prior written consent of Philips, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect. Notwithstanding the foregoing, either party shall be entitled to assign this Agreement, without the prior consent of the other party, to a (i) purchaser of a sale of a substantial amount of their assets to which this Agreement relates or to a (ii) different affiliated legal entity of a party to this Agreement or their parent company to support an internal reorganization of the assets of such party or such party's parent corporate legal entity; provided that, the assignee assumes all liabilities and obligations of the assignor and the assignor is not in breach of its payment obligations under this Agreement prior to such assignment.

**17.4 Export Controls.** Customer shall assume sole responsibility for obtaining any required export authorizations in connection with Customer's export of the products from the country of delivery. Customers located in Canada are not permitted to re-sell, rent, or in any other way distribute these products outside Canada, without Philips' prior written approval.

**17.5 Governing Law.** All transactions contemplated by the quotation shall be governed by the laws of the province of Ontario, and the laws of Canada applicable therein without regard to conflict of law principles. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS 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.

**17.6 Entire Agreement.** These Terms and Conditions of Sale (including the applicable Product Specific Schedules), the terms and conditions set forth in the quotation, any SOW entered into between the parties, and the applicable Philips' product-specific warranty constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall 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 shall not apply to the transactions contemplated by the quotation. Save and except for items where Philips has expressly retained the right to unilaterally amend the terms as set out herein, this Agreement may not be amended or modified except by written instrument signed by both parties.

**17.7 Headings.** The headings in the quotation are intended for convenience only and shall not be used to interpret the quotation.

**17.8 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.

**17.9 Notices.** Notices or other communications shall be in writing, and shall be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth in the quotation.

**17.10 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 sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting the terms and conditions of the quotation.

**17.11 Obligations.** Customer's obligations are independent of any other obligations the Customer may have under any other agreement, contract, or account with Philips. Customer will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Philips.

**17.12 Additional Terms.** Product Specific Schedules are incorporated herein as they apply to the products listed in the quotation and their additional terms shall apply solely to Customer's purchase of the products specified therein. If any terms set forth in a Product Specific Schedule conflict with terms set forth in these Terms and Conditions of Sale, the terms set forth in the Product Specific Schedule shall govern. Unless otherwise specified in a Product Specific Schedule, any capitalized term used in a Product Specific Schedule shall have the meaning ascribed to it in the main body of these Philips Standard Terms and Conditions of Sale.

**17.13 Subcontractors.** Philips may use subcontractors, which may include its affiliates or an Original Equipment Manufacturer (OEM), in the performance of its services under this Agreement, including with respect to any after-sales services, however, Philips will remain responsible for the performance of any such services as if such services were performed directly by Philips.

**17.14 Independent Contractors.** The relationship of Philips Canada and Customer established by this Agreement shall be that of independent contractors and nothing contained in this Agreement shall be construed to constitute the parties as employer and employee, principal and agent, franchisor and franchisee, partners, co-owners or otherwise as participants in a joint venture or common undertaking.

**17.15 Professional Services.** Customer shall at all times be responsible for any decisions based upon any services provided by Philips hereunder of a consultative nature, such advice or recommendations. Customer acknowledges and agrees that Customer is solely responsible for independently verifying the results of any services of a consultative nature and for Customer's reliance thereon.

**17.16 Counterparts and Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic signature. The parties confirm that it is their express wish that this Agreement well as any other documents relating to this Agreement, including notices, schedules, and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.

## **LICENSED SOFTWARE**

### **1. License Grant**

- 1.1 Subject to any usage limitations for the Licensed Software set forth on the product description of the quotation, Philips grants to Customer a nonexclusive and non-transferable right and license to use the computer software package (Licensed Software) in accordance with the terms of the quotation and these Terms and Conditions of Sale. The License shall continue for as long as Customer continues to own the product, except that Philips may terminate the License if Customer is in breach or default of these Terms and Conditions of Sale and/or the quotation. Customer shall return the Licensed Software and any authorized copies thereof to Philips immediately upon expiration or termination of this License.
- 1.2 The License does not include any right to use the Licensed Software for purposes other than the operation of the product. Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Except as otherwise provided under Section 1.6, 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.

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- 1.4 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 on the quotation. 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.
- 1.5 The Licensed Software shall be used only on the product(s) referenced in the quotation.
- 1.6 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; provided that Customer is not in breach or default of this License, the Terms and Conditions of Sale, or any payment obligation to Philips.

## **2. Modifications**

- 2.1 If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the products shall become null and void. Customer installation of Philips issued patches or updates shall not be deemed to be modification. 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.
- 2.2 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 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.