

## MOBILE C-ARMS (SURG) SYSTEMS PRODUCT WARRANTY

This product warranty document is an addition to the terms and conditions set forth in the quotation to which this warranty document is attached. The terms and conditions of the quotation are incorporated into this warranty document. The capitalized terms herein have the same meaning as set forth in the quotation.

### **1. Twelve (12) Month System Warranty.**

1.1 Philips Healthcare, a division of Philips North America LLC (Philips) warrants to Customer that the Philips' Mobile C-Arms Systems (System) will perform in substantial compliance with its performance specifications, in the documentation accompanying the System, for a period of twelve (12) months after completion of installation and availability for first patient use.

1.2 The glassware and flat detectors provided with the System is subject to special warranty terms set forth below.

### **2. Planned Maintenance.**

2.1 During the warranty period, Philips' service personnel shall provide one (1) inspection call up to twelve (12) hours in duration approximately thirty (30) days prior to warranty expiration.

2.2 This inspection shall be scheduled in advance at a mutually agreeable time on weekdays, between 8:00am and 5:00pm, excluding Philips' observed holidays.

### **3. System Options, Upgrades or Accessories.**

3.1 Any Philips' authorized options, upgrades, or accessories for the System which are delivered and/or installed on the System during the original term of the System warranty shall be subject to the same warranty terms contained in the first paragraph of this warranty, except that such warranty shall expire on the later of:

3.1.1 upon termination of the initial twelve (12) month warranty period for the System on which the option, upgrade or accessory is installed; or

3.1.2 after ninety (90) days for parts only from the date of installation.

### **4. Diagnostic X-Ray Tubes. Monoblock X-Ray Source (BV Pulsera, Veradius, Veradius Neo, Veradius Unity, Zenition).**

4.1 Philips' Monoblock X-Ray source installed as part of the BV Pulsera, Veradius, Veradius Neo, Veradius Unity, and Zenition will perform for a period of twelve (12) months or will be replaced by Philips at no charge to the customer.

4.2 Claims must be made within twelve (12) months after installation and fourteen (14) months after date of shipment from Philips.

### **5. Diagnostic X-Ray Tubes (BV-Endura).**

5.1 Philips' FA Monoblock installed as part of the BV Endura will perform for a period of twelve (12) months or will be replaced by Philips at no charge to the customer.

5.2 Claims must be made within twelve (12) months after installation and fourteen (14) months after date of shipment from Philips.

### **6. System Software and Software Updates.**

6.1 The software provided with the System will be the latest version of the standard software available for that System as of the ninetieth (90th) day prior to the date the System is delivered to Customer.

6.2 Updates to standard software for the System that do not require additional hardware or equipment modifications will be performed as a part of normal warranty service during the term of the warranty.

6.3 All software is and shall remain the sole property of Philips or its software suppliers.

6.4 Use of the software is subject to the terms of a separate software license agreement.

6.5 No license or other right is granted to Customer or to any other party to use the software except as set forth in the license agreements.

6.6 Any Philips' maintenance or service software and documentation provided with the System and/or located at Customer's premises is intended solely to assist Philips and its authorized agents to install and to test the System, to assist Philips and its authorized agents to maintain and to service the System under a separate support agreement with Customer, or to permit Customer to maintain and service the System.

6.7 Customer agrees to restrict the access to such software and documentation to Philips' employees, those of its authorized agents and its authorized employees of Customer only.

## **7. Warranty Limitations.**

- 7.1 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.
- 7.2 Any refund will be paid, to the Customer when the product is returned to Philips.
- 7.3 Warranty service outside of normal working hours (i.e. 8:00am - 5:00pm, Monday through Friday, excluding Philips' observed holidays), will be subject to payment by Customer at Philips' standard service rates.
- 7.4 This warranty is subject to the following conditions: the product:
- 7.4.1 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);
  - 7.4.2 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
  - 7.4.3 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.
- 7.5 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.
- 7.6 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.
- 7.7 The obligations of Philips described herein are Philips' only obligations and Customer's sole and exclusive remedy for a breach of a product warranty.
- 7.8 THE WARRANTIES SET FORTH HEREIN 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.
- 7.9 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.

## **8. Philips' Remote Services Network (RSN).**

- 8.1 Customer will:
- 8.1.1 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
  - 8.1.2 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).
- 8.2 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.
- 8.3 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. Transfer of System.**

- 9.1 In the event Customer transfers or relocates the System, all obligations under this warranty will terminate unless Customer receives the prior written consent of Philips for the transfer or relocation.
- 9.2 Upon any transfer or relocation, the System must be inspected and certified by Philips as being free from all defects in material, software and workmanship and as being in compliance with all technical and performance specifications.
- 9.3 Customer will compensate Philips for these services at the prevailing service rates in effect as of the date the inspection is performed.
- 9.4 Any System which is transported intact to pre-approved locations and is maintained as originally installed in mobile configurations will remain covered by this warranty.

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

- 10.1 THE TOTAL LIABILITY OF PHILIPS ARISING UNDER OR IN CONNECTION WITH THE PRODUCT FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS, WARRANTY, NEGLIGENCE, UNLAWFUL ACT OR OTHERWISE IN CONNECTION WITH THE PRODUCT IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.
- 10.2 PHILIPS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES AND/OR FOR ANY DAMAGES INCLUDING, LOSS OF DATA, PROFITS, REVENUE, BUSINESS INTERRUPTION OR USE IN CONNECTION WITH OR ARISING OUT OF THESE CONDITIONS OF SALE, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT AND WHETHER THE CLAIM IS MADE IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, AT LAW OR IN EQUITY. NEITHER PHILIPS NOR PHILIPS' SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OR INABILITY TO USE MEDICAL OR OTHER DATA STORED ON OR BY THE PRODUCT.
- 10.3 THE EXCLUSION OF LIABILITY IN THESE CONDITIONS OF SALE SHALL ONLY APPLY TO THE EXTENT ALLOWED UNDER THE APPLICABLE LAW.
- 10.4 FOR US CUSTOMERS, THE FOLLOWING ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY UNDER SECTION 10.1:
  - 10.4.1 THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT.
  - 10.4.2 CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT.
  - 10.4.3 OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION.
  - 10.4.4 FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

## **11. Disclaimer.**

- 11.1 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.

## **12. Force Majeure.**

- 12.1 Philips and Customer shall each be excused from performing its 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 request.

Philips' system specifications are subject to change without notice.

*SURG Product Warranty Rev. 22*