

**Philips Healthcare a division of Philips New Zealand Limited**  
**General Terms and Conditions of Sale and Software License ('Conditions of Sale')**

The products ('Products' or when referred to in a singular manner 'Product') are offered and sold by Philips Healthcare a division of Philips New Zealand Limited GST No. 10-568-986 ('Philips') only under the terms and conditions described below.

**1. Validity of Quotation and Conditions of Sale**

Philips' quotation is open for acceptance within the period stated therein, but is subject to change or withdrawal prior to such acceptance. Any customer orders, whether or not arising from Philips' quotation, shall be subject to Philips' confirmation in writing. These Conditions of Sale shall prevail over any conditions issued by the customer, unless and to the extent expressly stated otherwise in Philips' quotation.

**2. Prices**

2.1 Unless otherwise stated, all prices quoted are ex store. Freight will be an additional charge. The amount payable to Philips shall be the price, any additional charges plus any Goods and Services Tax payable.

2.2 If the costs payable by Philips in respect of labour, materials, freight, insurance, duties, levies or prices quoted to Philips by suppliers, shall be varied from the respective costs or prices ruling at the date of quotation, the prices quoted shall be varied up or down, as the case may be, by the same amount by which actual costs have been increased or decreased as a result of any such variation.

**3. Payment**

3.1 Unless otherwise provided, payment terms are net cash within 30 days from the date of the invoice. Invoices will be issued when goods are delivered or are available for delivery or where the contract provides for installation and/or commissioning when these services have been provided or the equipment is available for clinical use.

3.2 Philips may at any time require any amount that has become payable to be paid immediately and before delivery or any other performance by Philips, if Philips considers the customer to be a credit risk.

3.3 Where payment is overdue Philips may charge interest at the rate of 3% plus the overdraft rate charged by Philips bankers at the time of default calculated on a daily basis on any monies due but unpaid. If customer fails to pay any amount when due, Philips may discontinue the performance of services, discontinue the delivery of the Product(s), or deduct the unpaid amount from any amounts

otherwise owed to the customer by Philips or any of its affiliates under any agreement with the customer, in addition to any other rights or remedies available to Philips. Furthermore Philips, or its designated representative, will be allowed, without notice to the customer, to enter any premises in which the Products may be found and render them inoperable or remove them, and hold and sell them in accordance with the applicable law. In any action initiated to enforce these Conditions of Sale following a customer default or otherwise, Philips shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorney's fees, in connection with such action.

3.4 If the customer cancels an order prior to the Product delivery and the customer has a legal right to do so, the customer shall pay the costs incurred by Philips up to the date of cancellation including, but not limited to, the costs to manufacture the Product, the costs to provide any training, educational, or other services to the customer in connection with the order, a nominal restocking fee, and the costs to return or cancel any product ordered from a third party. In other cases of cancellation, the agreed price remains due and payable.

**4. Financing**

4.1 If at any time before the delivery of any goods the customer informs Philips that finance is to be arranged in respect of those goods the following shall apply:

4.1.1 The customer agrees to procure a finance company to purchase the goods and shall notify Philips of the name and address of such finance company.

4.1.2 Philips shall address its invoice for the goods to the finance company and all payments by the finance company shall discharge to that extent the customer's obligations under clause 3, but all other provisions of the contract shall remain in full force and effect.

4.1.3 If there shall be any breach by the customer of this clause, or if the nominated finance company shall for any reason (other than default on the part of Philips) fail within the times stated in clause 3 to pay in full the amount of any invoice addressed to it, Philips may address or re-address the invoice to the customer who shall thereupon be bound to purchase the goods from Philips and to pay for the same in accordance with clause 3.

4.1.4 The customer acknowledges that no discussions, correspondence or other

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communications between the parties concerning the sources or availability of finance shall in any way affect the customer's obligations under this clause.

4.1.5 Goods will be delivered only after receipt of satisfactory written authorisation from the finance company.

**5. Title and Risk of Loss**

5.1 The customer grants Philips a security interest in the present and after-acquired goods as security for all amounts owing by the customer to Philips and performance of the customer's obligations under these Conditions of Sale.

5.2 The customer shall ensure that it is always able to identify:

5.2.1 the goods from any other goods that may be in the customer's possession; and the particular goods to which any invoice relates.

5.3 Title to any particular good shall remain in Philips until all amounts owing to Philips for those goods have been paid in full.

5.4 Until title to any particular good passes to the customer, the customer shall:

5.4.1 hold those goods as Philips's bailee;

5.4.2 return those goods to Philips on request; and

5.4.3 hold any cash proceeds of those goods on trust for Philips in a separate account.

5.5 Even though title to any particular goods remains in Philips, the customer may sell those goods on the customer's own account provided that:

5.5.1 any such sale is conducted at arms length and is for the full market value of those goods; and

5.5.2 Philips has not requested the return of those goods.

5.6 The goods shall be at the customer's risk from delivery (whether to the customer or another person on the customer's behalf) and the customer shall insure the goods for their full replacement value.

5.7. Personal Property Securities Act 1999 ('PPSA')

If the customer fails to comply with any term of these Conditions of Sale or any other agreement with Philips, Philips or its agent may exercise any and all remedies afforded to a secured party by Part 9 of the PPSA and enter any building or premises

owned, occupied, or used by the customer, to search for and re-take possession of the goods.

The customer agrees that sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall not apply on the enforcement by Philips of any security interest created or provided for by this Agreement. The customer also waives any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA on such enforcement.

The customer acknowledges receipt of a copy of these Conditions of Sale and waives any right it may have to receive from Philips a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these Conditions of Sale.

Unless the context otherwise requires terms and expressions in these Conditions of Sale that are defined in the PPSA shall have the same meaning in these terms as in the PPSA and references to the goods include references to any one of them.

**6. Technical Changes; Obsolescence of Products**

Philips shall have the right to make changes in the design or specifications of the Products at any time, provided that such change shall not adversely affect the performance of said Products.

During the validity period of Philips' quotation, some of the Products might become obsolete. In such a situation, Philips shall endeavour to provide equivalent replacement Products at similar prices, but shall not be held responsible in case there are no replacements available.

**7. Despatch and Delivery**

7.1 Philips shall make reasonable efforts to meet any delivery dates quoted or acknowledged, but shall not be liable for failure to meet those dates. In case Philips cannot despatch the Products to their destination by the date scheduled, due to reasons outside Philips' reasonable control, such as, but not limited to, reasons attributable to customer, Philips may make part delivery or alternatively shall be entitled to store the Products concerned at the customer's expense and risk. In such case the warehouse receipt(s) shall serve as substitute(s) for the shipping documents in all respects and the customer undertakes to reimburse within fourteen (14) days of Philips' first demand any and all additional expenses so incurred.

7.2 Goods offered ex stock are subject to prior sale.

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**8. Installation**

In case Philips' quotation or sale includes installation of the Products, the customer shall be responsible for the following at customer's sole expense and risk:

(a) The provision of adequate and lockable storage on or near the installation site for the Products in order to ensure protection against theft and any damage or deterioration. Any item lost or damaged during the storage period shall be repaired or replaced at the customer's cost.

(b) The availability on or near the installation site of adequate and lockable rooms equipped with sanitary installations, for personnel of Philips or Philips' representative and for the storage of the personnel's tools and instruments.

(c) The timely execution and completion of the preparatory works, in conformity with any requirements that Philips shall indicate to the customer in due time. The site preparation shall be in compliance with all safety, electrical and building codes relevant to the Products and their installation. Sufficiency of such plans and specifications, specifically including, but not limited to the accuracy of the dimensions described therein, shall be the sole responsibility of customer. The installation site shall be made available to Philips or Philips' representative without obstacles in due time to enable Philips or Philips' representative to start the installation work at the scheduled date; installation personnel shall not be called upon the installation site until all preparatory work has been, in the sole opinion of Philips, satisfactorily completed.

(d) The timely provision of the permits and licenses required by the pertinent authorities for or in connection with the installation and the operation of the Products.

(e) Philips assumes that no hazardous material exists at the installation site. If any such material exists, the customer shall be responsible for the proper removal and disposal of the material at the customer's expense.

In case any or all of the above conditions are not properly or timely complied with, or Philips or Philips representative is not given access to the site, or has to interrupt the installation and subsequent testing for reasons not attributable to Philips, the period of completion shall be extended accordingly and any and all additional costs resulting therefrom shall be for the customer's account. Philips NEITHER ASSUMES LIABILITY NOR OFFERS

ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF THE PREMISES OR THE UTILITIES AVAILABLE AT THE PREMISES IN WHICH THE PRODUCT IS TO BE INSTALLED, USED OR STORED.

**9. Acceptance**

In case installation of the Products is offered, Philips shall notify the customer when the Products installed will be ready for testing and acceptance, inviting the customer to attend the standard tests or such tests as may have been agreed upon in writing to demonstrate compliance with the agreed specifications and/or to inspect the installation work.

If the customer's representative fails to attend the testing on the date notified, the technical staff of Philips or its representative will commence with the tests according to Philips' standard test procedures and these tests shall be considered performed in the presence of the customer's inspector and acceptance shall in such case take place on the basis of the results stated in the test certificate signed by Philips.

In case of rejection of the Products installed for justified reasons, to be submitted to Philips in detail and in writing within ten (10) days after completion of the acceptance tests concerned, Philips shall as a sole remedy correct the shortcomings as soon as possible and the relevant parts of the acceptance test shall be repeated within a reasonable period of time in conformity with the procedures outlined above.

If within ten (10) days after completion of the acceptance test Philips shall not have received the acceptance certificate signed by the customer or a report of rejection for justified reasons the Products installed shall be considered as having been accepted by the customer. The customer acknowledges that the Products may not be used for clinical purposes until the customer has signed Philips' acceptance certificate.

Minor defects or deviations not affecting the operational use of the Products installed shall be stated in the acceptance certificate, but shall not obstruct or suspend acceptance. Philips undertakes to remedy such defects as soon as possible.

**10. Complaints and Returns**

The customer shall notify Philips in writing and shall substantiate any complaints of erroneous despatch and/or apparent damage to the Products supplied within ten (10) days after receipt of the Products including the date and number of Philips' invoice. Philips shall issue, upon acceptance of the

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complaint, a return authorisation notice and customer shall return the relevant Products in accordance with Philips' instructions. All Products returned must be insured and carriage prepaid by customer and packed in their original packing.

**11. Product Warranty**

Philips provides Product specific warranties with respect to the offered Products, as set out in Philips' quotation, or as annexed hereto. In absence of any Product specific warranty, Philips warrants to the customer the good quality of any hardware Products supplied, for a period of one year as from the date of acceptance or first patient use, whichever occurs first, but in no event for more than fifteen (15) months as from the date of despatch, against defects which appear therein under proper use, and which arise solely from faulty materials or workmanship. This warranty does not include any vacuum articles to which a pro rata credit applies. Furthermore this warranty is not applicable for replacement parts, hardware upgrades, consumables and other excluded items for which specific warranty conditions apply as indicated, provided for or made accessible by Philips.

Philips' obligations under any product warranty are limited, at Philips' option, to the repair or the replacement of the Product or a portion thereof, or to a refund of a portion of the purchase price paid by the customer. Any refund will be paid to the customer when the defective Product or part is returned to Philips. Any product warranty is made on condition that Philips receives written notice of a Product defect during the warranty period and within ten (10) days following the discovery of the defect by the customer, and, if so requested, the defective Products have been returned to an address or location indicated by Philips. Such defective parts shall become Philips' property as soon as they have been replaced. Philips' obligations under any product warranty do not apply to any defects resulting from: (a) improper or inadequate maintenance or calibration by the customer or its agents; (b) customer or third party supplied software, interfaces, or supplies; (c) use or operation of the Product other than in accordance with Philips' applicable Product specifications and written instructions; (d) abuse, negligence, accident, loss; (e) damage in transit; (f) improper site preparation; (g) unauthorised maintenance or modifications to the Product; (h) any damage to the Product – including software – or any medical or other stored data caused by an external source regardless of its nature, including but not limited to hacking, or, (i) viruses or similar software interference resulting from the connection of the Product to a network. Philips does not provide a

warranty for any third party products furnished to the customer by Philips under this quotation; however, Philips shall use reasonable efforts to extend to the customer the third party warranty for such product. The obligations of Philips described above are Philips' only obligations and the customer's sole and exclusive remedy for a breach of a Product warranty.

SUBJECT ONLY TO THE NEXT SUCCEEDING PARAGRAPH THE WARRANTIES SET FORTH HEREIN OR IN PHILIPS' WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED AS A RESULT OF THIS QUOTATION OR SALE, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Where legislation implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying application or exercise or liability under such condition or warranty, the condition or warranty will be deemed to be included in this agreement. However, the liability of Philips for any breach of such condition or warranty will be limited, at the option of Philips, to one or more of the following:

- (a) if the breach relates to goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of such goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

Notwithstanding any other provision in these Conditions of Sale, the provisions of the Consumer Guarantees Act 1993 (NZ) ('CGA') are hereby expressly excluded and will not apply to any products or services supplied by Philips which the customer acquires for the purposes of a business (as 'business' is defined in the CGA).

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**12. Software and Licenses**

All software is and shall remain the sole property of Philips or its software suppliers. The General Customer Software License Conditions attached hereto, form an integral part hereof, contain specific warranty arrangements with respect to any Licensed Software (as defined in the General Customer Software License Conditions).

**13. Limitation of Liability** The liability, if any, of Philips and Philips' representatives for damages whether arising from breach of the terms in this quotation, breach of contract, warranty, negligence, indemnity, strict liability or other tort, or otherwise with respect to the Products is limited to an amount not to exceed the price of the Product giving rise to the liability.

a) **DISCLAIMER.** PHILIPS AND PHILIPS' REPRESENTATIVES SHALL IN NO EVENT BE LIABLE TO THE CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COVER, OR LOSS OF DATA, PROFIT, REVENUE OR USE, IN CONNECTION WITH OR ARISING OUT OF THESE CONDITIONS OF SALE OR ANY RESULTING AGREEMENT, OR THE FUNCTIONING OR THE CUSTOMER'S USE OF, OR INABILITY TO USE PRODUCTS, INCLUDING (EMBEDDED) SOFTWARE, OR FOR ANY LIABILITY OF THE CUSTOMER TO ANY THIRD PARTY WITH RESPECT THERETO. NEITHER PHILIPS NOR PHILIPS' SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF OR INABILITY TO USE MEDICAL OR OTHER DATA STORED IN GOODS, INCLUDING (EMBEDDED) SOFTWARE OR ON OTHER MAGNETIC MEDIA, AND NEITHER PHILIPS NOR PHILIPS' REPRESENTATIVES SHALL BE RESPONSIBLE FOR RELOADING DATA IN SUCH EVENT.

b) **Infringement Claims.** If a third party makes, or attempts to make, a claim against the customer alleging that a Philips Product delivered hereunder infringes a valid claim under a patent, utility model, industrial design, copyright, trade secret, mask work, or trademark (collectively 'Intellectual Property Right'), the customer shall (a) provide Philips prompt written notice of the claim, and (b) grant Philips full and complete information; and if Philips chooses in writing to defend, settle or negotiate the claim customer shall (i) give Philips sole control of any defence or settlement that it may undertake and (ii) provide Philips with all reasonable assistance if so desired by Philips.

Philips shall have no obligation for any claim of infringement and customer shall reimburse all reasonable costs (including, but not limited to, attorneys fees) in case a claim arises from: (a) Philips' compliance with the customer's designs, specifications, or instructions; (b) Philips' use of technical information or technology supplied by the customer; (c) modifications to the Product by the customer or its agents; (d) use of the Product other than in accordance with the product specifications or applicable written product instructions; (e) use of the Product with products not manufactured by Philips if infringement would have been avoided by the use of a current unaltered release of either the Philips Product, the third party products or both. Furthermore, Philips will not be liable for any claim where the damages sought are based directly or indirectly upon the quantity or value of products or services generated by means of the Products purchased under the quotation, or based upon the amount of use of the Product regardless of whether such claim alleges the Product or its use infringes or contributes to the infringement of such claim.

In case (a) a non-appealable judgment of a competent court having jurisdiction declares the claim to be valid or (b) the Product is believed by Philips to infringe such a claim, Philips may, at its option, (i) procure the right for the customer to continue to use the Product, (ii) replace or modify the Product to avoid infringement, or (iii) refund to the customer a reasonable portion of the Product purchase price upon the return of the original Product.

The terms in this section state Philips' entire obligation and liability for claims of infringement, and the customer's sole remedy in the event of a claim of infringement.

**14. Use and Ownership of Documents**

All technical information in relation to the Products and their maintenance are Philips proprietary information, covered by Philips copyrights and remain Philips' property and may not be copied, reproduced, transmitted or communicated to or utilized by third parties without Philips' prior written consent. Data such as but not limited to illustrations, catalogues, colours, drawings, dimensions, statements of weight and measurements made available as (printed) information are an approximation only and customer can not derive any rights based on these data.

**15. Export Control**

Goods delivered by Philips are intended for use only in New Zealand. In the event of re-export, the legal export regulations of New Zealand and the

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relevant country of manufacture must be complied with. Philips must be contacted prior to export of any goods.

The validity of Philips' quotation and any resulting contract therefrom may be subject to the granting of a governmental export licence. In the event that such licence or end-user statement is required, the customer shall provide Philips with such document upon first written request.

In case the delivery of goods or services is restricted or forbidden due to (changed) export control laws, the rights and obligations of the customer may be suspended for the estimated duration of the (changed) export control laws or the contract may be cancelled.

**16. Confidentiality** Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing, electronically or disclosed orally, relating to the Products and business of the disclosing party, its customers and/or its patients, and this quotation or sale and its terms, including any pricing information. 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 like information, but not less than reasonable care. Each party shall disclose such information only to its employees having a need to know such information to perform the transactions contemplated by this quotation. The obligation to maintain the confidentiality of such information shall not extend to information in the public domain at the time of disclosure, and/or information that is required to be disclosed by law or by court order.

**17. Force Majeure**

Each party is entitled to suspend the performance of its obligations as a result of any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, war, civil war, insurrection, fires, floods, labour disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, Philips' non-availability of any permits, licenses and/or authorisations required, defaults or force majeure of suppliers or subcontractors.

If force majeure prevents Philips from filling any order from customer or otherwise performing any obligation arising out of the sale, Philips shall not be liable for any compensation, reimbursement or damages whether for direct, indirect or consequential loss or otherwise.

**18. Taxes**

All taxes, duties, levies and similar expenses, which are or become due in connection with our quotation, any order or agreement resulting therefrom, and the carrying out thereof are for the account of the customer unless specifically stated otherwise in the quotation.

**19. Miscellaneous**

(a) If the 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 or frozen, Philips may cancel any unfulfilled obligations, or suspend performance; however, the customer's financial obligations to Philips shall remain in effect.

(b) The customer may not assign any rights or obligations in connection with the transactions contemplated by this quotation or sale without the prior written consent of Philips, and any attempted assignment without such consent shall be of no force or effect.

(c) All transactions contemplated by this quotation or sale shall be governed by the laws of New Zealand. Customer and Philips shall submit any dispute that cannot be solved amicably to the exclusive jurisdiction of the courts of New Zealand.

(d) The terms and conditions in this quotation or sale constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by this quotation or sale, and supersede any previous understandings or agreements between the parties whether written or oral regarding the transactions contemplated by this quotation or sale. The pricing in this quotation or sale is based upon the terms and conditions in this quotation or sale. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. The customer's submission of a purchase order shall evidence the customer's agreement to these terms and conditions.

(e) The headings in these Conditions of Sale are intended for convenience only, and shall not be used to interpret the content of the clauses as set out herein.

(f) If any provision of these Conditions of Sale 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. In substitution for any such provision

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deemed to be illegal, unenforceable, or invalid, in whole or in part, a provision reflecting the original intent hereto to the extent permissible under applicable law shall be deemed to substitute said provision.

(g) 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 relevant party.

(h) The failure of the 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. The 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 these Conditions of Sale.

(i) Philips shall have the right at any time to assign or novate to a related company within the meaning of the Companies Act all of its rights and obligations arising under any agreement or otherwise in connection with the transactions contemplated by this quotation or sale without requiring the prior written consent of customer.

(j) The customer's obligations are independent of any other obligations the customer may have under any other agreement, contract, or account with Philips. The customer will not exercise any right of offset in connection with the terms and conditions in this quotation or sale, or in connection with any other agreement, contract, or account with Philips.

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**GENERAL CUSTOMER SOFTWARE**  
**LICENSE AGREEMENT ('License')**

This License is entered into by and between Philips Healthcare a division of Philips New Zealand Limited GST No. 10-568-986 ('Philips') and each customer who is a purchaser of Philips' software ('Licensee'), and is entered into as part of the sale of certain products identified on the face of this quotation or sales document attached to this License. This License does not supersede or replace any terms of the quotation or sales agreement and any document attached to or part of the quotation or sales agreement, or support agreements applicable to the products.

Philips has not authorized any employee or agent to grant any licenses other than as set forth herein or other rights with respect to any patent application, patent, copyright, trademark, trade secret, proprietary right, or other property right of Philips or any of its suppliers.

**1. Definitions**

The following terms used hereinafter shall have the meaning set forth below:

A. 'Affiliate' means, with respect to Philips, any entity which controls, is controlled by or under common control with Koninklijke Philips Electronics N.V. of The Netherlands.

B. 'Agreement': means the sales/lease/supply agreement, based on which a right and license to use software in the Products is provided by Philips to the Licensee on the basis of these General Customer Software License Conditions ('License')

C. 'Designated Hardware': means the medical hardware as supplied by Philips, with which the Licensed Software is designed to work.

D. 'Functional Specification': means the description of functionality of a specific software product, version, update, upgrade or option, as described by Philips.

E. 'Identified Software' means Publicly Available Software and, without limitation, any other software which is licensed pursuant to terms that (1) create, or purport to create, obligations for Philips, its Affiliates or its suppliers with respect to the Licensed Software or any other software furnished with any Designated Product or other Philips product or which is a derivative work of the Licensed Software or such other software, or (2) grant, or purport to grant, to any third party any rights or immunities under Philips', its Affiliates' or its suppliers' intellectual property or proprietary

rights in such software, the Designated Product or other Philips product or any derivative work of the above mentioned software.

F. 'Licensed Software': means the computer programs provided pursuant to the Agreement to be operated on the Designated Hardware (as defined hereinafter) covering application, system and test functions, furnished on magnetic or fixed media, including the supporting documentation necessary to effectively use the computer programs. Test functions are understood to cover measurement to verify that the Products are in good working condition, but excluding any further diagnostic functions such as but not limited to troubleshooting and verification after repair. This License does not extend to any maintenance or service software shipped (separately or with the Product) to or located at Licensee's premises which is intended to assist Philips' employees or agents in the installation, testing, service, and maintenance of the Product.

G. 'Licensor': means Philips.

H. 'Publicly Available Software' means any software that requires as a condition of use, modification and/or distribution of such software that other software incorporated into, derived from or distributed with such software be (1) disclosed or distributed in source code form; (2) be licensed for the purpose of making derivative works; or (3) be redistributable at no charge.

**2. License**

(a) Upon taking the Licensed Software in operation, and subject to fulfillment of the terms and conditions contained herein, Licensor grants to Licensee a personal non-transferable and non-exclusive right, without the right to sublicense, to use the Licensed Software in connection with the operation of the Designated Hardware.

(b) Unless otherwise agreed between the parties, the Licensed Software shall be installed by Licensor or by its authorized agents. Licensee undertakes not to use the Licensed Software or cause or allow the Licensed Software to be used prior to the execution of the customer acceptance certificate.

(c) The Licensed Software shall be used only on the Designated Hardware and at the site of the Licensee specified in the Agreement, unless it pertains to a mobile system. A separate license is required per each Designated Hardware or central processing unit on which the Licensed Software is to be used.

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(d) The Licensee shall use the Licensed Software only for the purpose(s) agreed to and shall not rent, electronically distribute or timeshare the Licensed Software or market it by interactive means or remote processing services or otherwise distribute or allow access to the Licensed Software other than specified herein or set out in the Agreement.

(e) Licensee acknowledges and agrees that the Licensed Software may include or incorporate technology owned or certified by Licensor suppliers ('Embedded Software') and that this License does not convey a license or imply a right under any patent, copyright, trade secret, or other intellectual property right of any such Licensor suppliers to use the Embedded Software so incorporated. If so required by such supplier(s), Licensee agrees to obtain a separate license from such supplier(s).

(f) Licensee shall hold Licensor harmless from any liability arising out of any unauthorized use of the Licensed Software.

(g) Except as expressly set out herein, no other rights in and to the Licensed Software or any other intellectual property right of Philips are granted to the Licensee pursuant to this License.

#### **3. License Fee**

The license fee shall be specified in the Agreement either separately or as part of the price of the Products.

#### **4. Reservations**

(a) The Licensed Software, including any copies thereof and any Intellectual Property Rights related thereto, shall at all times remain the sole and exclusive property of Licensor and Licensor's suppliers, even if the Licensed Software was developed by or on behalf of Licensor, specifically for use by the Licensee.

(b) Licensee acknowledges that the Licensed Software is unique to the Designated Hardware configuration and expressly assumes the risks associated with any unauthorized use or attempt to use the Licensed Software on equipment other than the Designated Hardware.

(c) Licensee may copy or have one copy available in machine-readable form for backup/archival purposes only as is necessary to support Licensee's own use of the Licensed Software on the Designated Hardware. Licensee agrees not to copy or otherwise reproduce the Licensed Software or any part thereof for other purposes without prior written authorization from Licensor. In as far as copying is allowed under this License, Licensee

shall not erase, delete or otherwise remove Licensor or Licensor's supplier(s) copyright notice(s) and other proprietary legend(s), if any, contained on the Licensed Software to such reproductions or copies. All restrictions in this License relating to the use and disclosure of the Licensed Software shall apply to any such reproduction or copies of the Licensed Software.

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