

Customer Care Solution Center (800)722-9377

Customer Care for Xper IM, and CVIS (800) 669-1328

890415 B01

Customer: San Bernardino County on behalf of Arrowhead Regional Medical Center

Address: 400 N. Pepper Avenue
 City,State/Zip: Colton, CA 92324
 Agreement Contact : Debrah Forthum

Payment Terms: Net 30
 Agreement Quote Date: 11/3/2021
 Prior Agreement #: 42076926
 Agreement Start Date: 8/1/2022
 Agreement End Date: 7/31/2027
 Billing Schedule: Yearly
 Multi -Year Option: 17%

Valid for 90 days

Philips Representative:				Tel:		Email:		Date:		Quote #:	
De'Juan Simpson				503-735-5719		dejuan.simpson@philips.com		11/3/2021		0048330-2	
Model #	Serial #	Qty	SAP#	Description		Start	End	Annual List \$	Extended Annual List \$		

Contract # 42076926 expires 7/31/2027

IntelliSpace Essential SMA Includes: Software Upgrades and Updates with implementation and clinical education for every software upgrade and every update on your current revision, Remote software technical support 24 x 7, Remote clinical application support M-F 8 x 5 (local time), Philips Remote Services (PRS), and OnSite software escalation M-F 8 x 5 (local time) next business day are also included.

867061	1	IntelliSpace Perinatal K, Large Architecture w/Flowchart (Surveillance and Archive)	8/1/2022	7/31/2027
ISP_SA	1	Surveillance and Archive	8/1/2022	7/31/2027
ISP_SA_ML	1	Medium Large (2001-4000 Births)	8/1/2022	7/31/2027
ISP_TCL	5	CL Think Client License	8/1/2022	7/31/2027
ISP_RDC	60	RDC Remote Desktop Client Lic	8/1/2022	7/31/2027
ISP_SL	6	SL Server License	8/1/2022	7/31/2027

Subtotal Discountable	\$316,835.00
Multi-Year Option Discount	(\$53,861.95)

Net Charge Year 1	\$52,594.61
Net Charge Year 2	\$52,594.61
Net Charge Year 3	\$52,594.61
Net Charge Year 4	\$52,594.61
Net Charge Year 5	\$52,594.61

Quotation Total	\$262,973.05
Term of Agreement 5 yrs	

Prices exclude taxes. Applicable taxes will be added to the invoice. Subject to credit approval.

IMPORTANT NOTICE: A signed copy of this agreement, for the services and prices quoted herein, is Customers acceptance that the Terms and Conditions and information in the Exhibit attached to this quotation are the sole terms applicable to the services quoted. The acceptance of this quotation is not binding upon Philips until further review by Philips contract administration. Except as required by any state or local freedom of information requirements or open record requirements the information contained in this document is confidential and is provided to the entity listed as the customer solely in connection with the evaluation of the purchase and sale. This information shall not be disclosed to any other party. The Philips terms and conditions of sale applicable to the service quoted herein are available via http://www.healthcare.philips.com/main/terms_conditions/ ("Terms and Conditions"). Health Care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including under any federal or state but not limited to 42 CFR 1001.952(h). Philips reserves all rights with regard to this information. Reserved.

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
<div>Authorized Signature _____ Authorized Signature _____</div> <div>Printed Name _____ Title _____</div> <div>Title _____ Date _____</div> <div>Date _____ Customer PO # _____</div> <div>(Please attach copy of original PO)</div> <div>Our facility does not issue formal purchase orders. We authorize payments 'In lieu of a Purchase Order' for services as described in Philips Healthcare Service Agreement authorized herein. Initialed: _____</div> <div><div>Billing Address: Customer Name: _____</div><div>Address: _____</div><div>City, State, Zip: _____</div><div>Contact: _____</div><div>For service entitlement, please reference the following contract number when calling into our Customer Care Service Center at the number listed above:</div><div>Philips Entitlement Contract Number: _____</div></div> <div>prepared by: Arielle Roides</div> <div>Mail Purchase Order & Quote To: Philips Global Business Services, North America, Contract Operations, Customer Order Fulfillment Center, 414 Union Street, Philips Plaza 6th Floor, Nashville, TN 37219</div>								

PHILIPS HEALTHCARE SERVICE AGREEMENT TERMS AND CONDITIONS (REV R)

****Denotes Amended paragraph**

1. **SERVICES PROVIDED**

- 1.1 The services listed in the quotation 0048330 (the "Services") are offered by Philips Healthcare, a division of Philips North America LLC ("Philips") to San Bernardino County on behalf of Arrowhead Regional Medical Center ("Customer") only under the terms and conditions described below, and on the quotation and any exhibits and attachments hereto, each of which are hereby incorporated (the "Agreement").

2. **EXCLUSIONS**

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

3. **CUSTOMER RESPONSIBILITIES**

During the term of this Agreement, Customer will:

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

4. **SYSTEM AND BIOMEDICAL EQUIPMENT AVAILABILITY**

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

5. **PAYMENT**

- 5.1 All payments under this Agreement are due thirty (30) days from the date of receipt of Philips' invoice. For the sake of establishing a due date, such receipt shall be considered to be no later than five (5) days from the date of Philips' invoice.
 - 5.1.1 Customer will pay interest on any amount not paid when due at the lesser of one percent (1%) interest per month or the maximum rate permitted by applicable law.
 - 5.1.2 Payments may be made by check, ACH, or wire. Philips does not accept transaction fees for wire transfers.
 - 5.1.3 If the quotation indicates net prices that are each associated with a payment method, then Philips will invoice Customer,

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6. FORCE MAJEURE

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

7. **TERM AND TERMINATION

- 7.1. The term of this Agreement shall be from August 1, 2022 through July 31, 2027 ("Term").
- 7.2. This Agreement is non-cancelable by Customer and will remain in effect for the Term specified in this Agreement. However, Customer may cancel service coverage for an individual Covered System under this Agreement upon sixty (60) days' written notice to Philips representing that the Covered System is being permanently removed from the Site and that the Covered System is not being used in any other Customer site.
- 7.3. Upon sixty (60) days' written notice to Philips, Customer may cancel this Agreement specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such sixty (60) day notice period. Termination under this clause shall not impact fees paid for Services rendered up to the time of such material breach, which shall remain payable to Philips.
- 7.4. In addition, if the Customer sells or otherwise transfers any of the Covered System to a third party and the System remains installed and in use at the same location, and such third party assumes the obligations of the Customer under this Agreement or enters into a new service agreement with Philips the price will be equal to the price in this Agreement and a term at least equal to the unexpired/unused term of this Agreement. If such third party does not assume the obligations of the Customer under this Agreement, then the Customer may terminate this Agreement with respect to such Covered System upon no less than thirty (30) days' prior written notice to Philips, in which case the Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement).
- 7.5. If this Agreement includes a Pool and terminates for any reason and Customer has expended more funds from its Pool than it has contributed to the Pool, then Customer shall pay Philips the amount by which its expenditures exceeded its contributions within five (5) business days of such termination.
- 7.6. Clinical Education training and credits will expire upon termination of the Agreement.
- 7.7. **TERMINATION FOR NON-APPROPRIATION OF FUNDS.** The continuation of this Agreement is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the Agreement. If the legislature fails to appropriate sufficient monies to provide for the continuation of the Agreement, or if such appropriation is reduced by veto of the Governor, or for any other lawful purpose, and the effect of such reduction is to provide insufficient funds for the continuation of the Agreement, the Agreement shall continue in full force and effect upon the issuance of a yearly purchase order. If a purchase order is not received ninety (90) days prior to the anniversary date, the Agreement will be terminated beginning the first day of the fiscal year not appropriated, there will be no penalty assessed on such termination.

8. **DEFAULT

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

9. ADULTERATED SYSTEMS

- 9.1 If Philips determines that a Covered System has been modified or adulterated in a manner not explicitly specified in the documentation accompanying the Covered System, including without limitation by including a part, component, or device not specified as compatible (an "Adulterated System"), and such modification or adulteration hinders Philips' ability to provide the Service or maintain the Covered System in a safe or effective manner, then Philips will promptly notify Customer of such Adulterated System. Following receipt of such notice, if Customer does not permit Philips (at Customer's cost) to remediate the Adulterated System, then Philips may remove the Adulterated System from the Site list, adjust the Services under this Agreement, and provide Customer with a refund of any Customer pre-payments for periods of Service not yet rendered or parts not yet provided.

10. END OF LIFE

- 10.1 AFTER THE END OF LIFE DATE, PHILIPS WILL CONTINUE TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR SYSTEMS, BASED ON PARTS AND TRAINED ENGINEER AVAILABILITY, BUT WITH NO UPTIME GUARANTEE. AFTER THE END OF LIFE DATE, PHILIPS WILL NOT CREATE OR TEST BUG FIXES, PATCHES, OR ENHANCEMENTS TO THE SYSTEM HARDWARE OR SOFTWARE.
- 10.2 If Philips determines that its ability to provide the Services is hindered due to the unavailability of parts or trained personnel, or that the Covered System can no longer be maintained in a safe or effective manner, as determined by Philips, then Philips may terminate this Agreement with respect to such Covered System upon notice to Customer and provide Customer with a refund of any Customer pre-payments for periods of Service coverage not already completed.

11. WARRANTY DISCLAIMER

- 11.1 All labor shall be performed in a good and workmanlike manner consistent with industry practices by personnel with training. Philips' full contractual service obligations to Customer are described in this Agreement, including all exhibits attached hereto that apply to the specific Services offering and coverage purchased under the Agreement. In the event of a material breach of the foregoing, Customer shall provide Philips written notice and an opportunity to cure per the termination section of this

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Agreement. Except as otherwise provided in this Agreement, Philips provides no additional warranties express or implied under this Agreement. NO WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO SERVICES OR SERVICE ITEMS PROVIDED BY PHILIPS UNDER THIS AGREEMENT.

12. **INTELLECTUAL PROPERTY INDEMNIFICATION

- 12.1 Philips shall indemnify, defend, and hold harmless Customer against any claim that Services, including any software, part, or service materials provided under this Agreement (collectively "Service Item(s)"), infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any intellectual property right, Customer will notify Philips promptly of such lawsuit, claim or election. And Customer will provide Philips with all information reasonably requested by Philips to defend, settle, or avoid the claim. However, Customer's failure to provide or delay in providing such notice will relieve Philips of its obligations only if and to the extent that such delay or failure materially prejudices Philips' ability to defend such lawsuit or claim. Customer will give Philips sole control of the defense and settlement of such claim; provided that Philips may not settle the claim or suit absent the written consent of Customer (which consent will not be unreasonably withheld) unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no material obligations upon Customer other than an obligation to stop using the Service Item that is the subject of the claim.
- 12.2 If a Service Item is found or believed by Philips to infringe a valid patent or copyright; Customer has been enjoined from using a repaired product or Service Item pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option: (i) procure the right for Customer to use the Service Item(s); (ii) replace or modify the Service Item(s) to avoid infringement; or (iii) refund to Customer a portion of the service fees upon the return of the Service Item(s) that are subject of such claims of infringement. Philips shall have no obligation for any claim of infringement arising from: Philips' compliance with Customer's designs, specifications, or instructions that relates solely to express written instructions from Customer, and is not attributable to Philips' exercise of any discretion in determining how to comply with Customer's designs, specifications, or instructions; Philips' use of technical information or technology supplied by Customer; modifications to the Service Item(s), which are not permissible hereunder; use of the covered Philips product (based on Service Item(s) delivered under this Agreement) other than in accordance with the product specifications or applicable written instructions; use of the covered Philips product, including with Service Item(s), with any other product not sold by Philips to Customer and the Philips product (including Service Items) in and of itself is not infringing; if claims of infringement would have been avoided by the use of a current unaltered release of covered Philips products, provided that, Philips makes such unaltered release available to Customer at no additional charge for use of the Philips Product (including with Service Items) after Philips has advised Customer, in writing, to stop use of the Philips Product in view of the claimed infringement (provided that this shall not be a replacement for the remedies set forth in 12.2 (i)-(iii) above). The terms in this section 12.2 state Philips' entire obligation and liability for claims of infringement and Customer's sole remedy in the event of a claim of infringement.

13. **LIMITATIONS OF LIABILITY AND DISCLAIMER

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

14. PROPRIETARY SERVICE MATERIALS

- 14.1 Philips may deliver or transmit certain proprietary service materials (including software, tools and written documentation intended solely to assist Philips and its authorized agents in performing Services under this Agreement) ("Proprietary Service Materials") that have not been purchased by or licensed to Customer. The presence of this property within the Site will not give Customer any right or title to this property or any license or other right to access, use, or decompile this property. Customer agrees to restrict access to such software, tools, and written documentation to Philips' employees and authorized agents only, and to permit Philips to remove its Proprietary Service Materials upon request. Customer will use all reasonable efforts to protect this property against damage or loss and to prevent any access to or use of this property by any unauthorized party. Customer shall immediately report to Philips any violation of this section.

15. THIRD-PARTY MANAGEMENT

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- 15.1 If Customer has contracted with a third party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization, or the like ("Third-Party Organization") for purposes of centralized billing and management of Services provided to Customer, at Customer's written request, Philips will route invoices for payment of Services rendered by Philips to such Third-Party Organization and accept payment from them on Customer's behalf. Notwithstanding the above, the Services provided by Philips are subject solely to the terms and conditions set forth in this Agreement. Customer guarantees the payment of all monies due or that may become due under this Agreement in spite of any collateral arrangements Customer may have with such Third-Party Organization or any payments Customer has made to the Third-Party Organization. Philips has no contractual relationship for the Services rendered to Customer except as set forth herein. To the extent that the parts and Services Philips provides are not covered by Customer's arrangement with such Third-Party Organization, Customer shall promptly pay for such parts and Services on demand.
- 16. **TAXES**
- 16.1 The price stated in the quotation does not include applicable sales, excise, use, or other taxes in effect or later levied. Customer shall provide Philips with an appropriate exemption certificate reasonably in advance of the effective date, otherwise, Philips shall invoice Customer for those taxes and Customer shall pay those taxes in accordance with the terms of the invoice. Customer is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Philips or on any taxes levied on employee wages. Customer shall only pay for any State or local sales or use taxes on the Products and Services rendered.
- 17. INDEPENDENT CONTRACTOR**
- 17.1 Philips is Customer's independent contractor, not Customer's employee, agent, joint venturer, or partner. Philips' employees and Philips' subcontractors are under Philips' exclusive direction and control. Philips has no liability or responsibility for and does not warrant Customer's or Customer's employees' acts or omissions related to any services that are performed by Customer employees under this agreement. Only Philips or its employees may authorize a third party to perform Services or obligations required of Philips under this Agreement on its behalf. Neither party has the authority to bind the other party in any promise, agreement, or representations other than as expressly provided for in this Agreement
- 18. RECORD RETENTION AND ACCESS**
- 18.1 Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing Services pursuant to these Terms and Conditions of Service, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Terms and Conditions of Service and the books, documents, and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Terms and Conditions of Service through a subcontract with a value or cost of ten thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Terms and Conditions of Service. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.
- 19. COMPLIANCE**
- 19.1 Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, and the Veterans Act of 1972 as amended), E-Verify, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Health care providers are reminded that if this Agreement includes a discount, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR1001.952[h]).
- 19.2 Business Associate Agreements (BAA). The most current BAA duly executed between Philips and Customer in effect at the time of Philips performance of the Services shall apply and is incorporated into this Agreement. In the event terms that explicitly govern the handling, processing, storage, disclosure, or use of PHI expressly set forth in the BAA conflict with terms set forth in this Agreement, the terms set forth in the BAA shall govern in such instance. Otherwise, the terms expressly set forth herein shall apply.
- 19.3 In the course of providing the Services to Customer hereunder, it may be necessary for Philips to have access to, view, and/or download computer files from the Covered System that might contain Personal Data. "Personal Data" includes information relating to an individual from which that individual can be directly or indirectly identified. Personal Data can include personal health information (e.g., images, heart monitor data, and medical record number) and non-health personal information (e.g., date of birth, gender). Philips will process Personal Data only to the extent necessary to perform and/or fulfill its Service obligations under this Agreement. Customer further acknowledges and agrees that all telephone conversations between Philips and Customer may, at Philips' discretion, be recorded.
- 20. **CONFIDENTIALITY**
- 20.1 "Confidential Information" means all nonpublic information, whether disclosed by a party or its affiliates or their respective employees or contractors, that is designated in writing as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950,

and California Public Records Act (Government Code Section 6250). Each party shall maintain as confidential any Confidential Information furnished or disclosed to one party by the other party, whether disclosed in writing, visually, or orally, relating to the business of the disclosing party, its customers, employees, and/or its patients. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement. The disclosing party maintains exclusive ownership of the confidential information which it discloses to the receiving party, and a receiving party shall be responsible for the breach of these confidentiality terms by any of its representatives or other person to whom it may disclose the confidential information. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of this Agreement or any other obligation of confidentiality or (b) is lawfully obtained by the receiving party from a third party without any breach of confidentiality or violation of law. If the receiving party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other party, it will, to the extent legally permissible, promptly notify the other party and if requested by the other party, tender to the other party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving party will then be entitled to comply with the request to the extent permitted by law.

21. **SUBCONTRACTS AND ASSIGNMENTS

- 21.1 Philips shall obtain Customer's written consent, which consent Customer will not unreasonably withhold, before entering into contracts with or otherwise engaging any subcontractors who may supply any part of the Services to Customer. No such subcontract will release Philips from those obligations to Customer. Customer may not assign this Agreement or the responsibility for payments due under it without Philips' prior express written consent, which will not be unreasonably withheld. Without the prior written consent of Customer, which consent Customer will not unreasonably withhold, the Agreement is not assignable by Philips either in whole or in part, except upon prior written notice when assignment is made due to operation of law, corporate reorganization, consolidation, merger, or sale of all of its assets.

22. **INSURANCE

- 22.1 Without in anyway affecting the indemnity herein provided and in addition thereto, Philips shall secure and maintain throughout the Agreement term the types of insurance with limits as shown in Attachment B, as attached hereto and incorporated herein.

23. RULES AND REGULATIONS

- 23.1 To the extent made known in writing to Philips, Philips and its subcontractors will comply with Customer's rules and regulations provided such rules and regulations do not conflict with established Philips policies.

24. EXCLUDED PROVIDER

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

25. GENERAL TERMS

- 25.1 Survival. Customer's obligation to pay any money due to Philips hereunder survives expiration or termination of this Agreement. All of Philips' rights, privileges, and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement.
- 25.2 Performance. The failure of Customer or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the Service and delivery of similar or dissimilar services shall not serve as references in interpreting the terms and conditions of this Agreement.
- 25.3 Severability. If any provision of the Agreement is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired and shall continue in full force and effect.
- 25.4 Counterparts. This Agreement may be executed in one or more counterpart copies, each of equal validity, that together constitute one and the same instrument. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.
- 25.5 Governing Law and Venue. All transactions contemplated under this Agreement shall be governed by the laws of the state in which the Covered System is located, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act ("UCITA"), in any form. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court

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Terms and Conditions of Service Rev R (September 2021)

CDSR-1499919, NK 06282022

of California, San Bernardino County, San Bernardino District.

- 25.6 Entire Agreement. This Agreement constitutes the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and/or Attachment A, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation and/or Attachment A. No additional terms, conditions, consents, waivers, alterations, or modifications will be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and will not apply to the transactions contemplated by this Agreement.
- 25.7 Additional Terms. Service specific exhibits and any associated attachments are incorporated herein as they apply to the Services listed on the quotation and/or Attachment A and their additional terms shall apply solely to Customer's purchase of the Services specified therein. If any terms set forth in an exhibit conflict with terms set forth in these Terms and Conditions of Service, the terms set forth in the exhibit shall govern.

26. **AUTHORITY TO EXECUTE**

- 26.1 The parties acknowledge that they have read the terms and conditions of this Agreement, that they know and understand the same, and that they have the express authority to execute this Agreement.

SAN BERNARDINO COUNTY



Curt Hagman, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

By _____
Deputy

Philips Healthcare, a division of Philips North America LLC

(Print or type name of corporation, company, contractor, etc.)

By

(Authorized signature - sign in blue ink)

Name _____

(Print or type name of person signing contract)

Title _____

(Print or Type)

Dated: _____

Exhibit 9
CLINICAL INFORMATICS SERVICE AGREEMENTS

1. SERVICE

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

Table 1 - Coverage Types						
Coverage Types	Telephone and Remote Support, Interface Support	Software Upgrades	Installation Services for Software Upgrades	Hardware Coverage	Customer Success Management services	Strategy realization services
IntelliSpace CORE	Included	Not Available	Not Available	Optional; See Hardware Support Attachment	Not Available	Not Available
IntelliSpace BASIC	Included	Included (every other)	Included	Optional; See Hardware Support Attachment	Not Available	Not Available
Essential Service Agreement	Included	Included	Included	Optional; See Hardware Support Attachment	Not Available	Not Available
Comprehensive Service Agreement	Included	Included	Included	Optional; See Hardware Support Attachment	Included	Not available
Prestige Service Agreement	Included	Included	Included	Optional; See Hardware Support Attachment	Included	Included

2. TELEPHONE AND REMOTE SUPPORT

- 2.1 Telephone Support. Telephone and Remote Support coverage is included with all service agreements identified in the Exhibit. Technical Telephone and Remote Support coverage Services are available twenty- four hours per day, seven days per week including Philips recognized holidays. Clinical Telephone and Remote Support coverage is available Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays.
- 2.2 Initial Telephone Response. If Philips receives a Customer request for service Monday through Friday between 8:00 AM and 5:00 PM local time, excluding Philips observed holidays, then Philips will make reasonable efforts to make an initial response within one hour from the receipt of the request. Otherwise, Philips will respond within two hours of the receipt of the original message.
- 2.3 Remote Access & Diagnostics. Philips may remotely access the Covered System to perform services. Customer shall provide Philips access to the Covered System.
- 2.4 On-Site Response. Philips primary method for software services is telephone and Philips Remote Services. Philips may provide on-site software support services to resolve software issues that cannot be resolved through Philips' primary resolution method. On-site services is next business day, Monday through Friday, excluding Philips recognized holidays, 8:00 AM to 5:00 PM local time, and provides for labor and travel necessary for the delivery of corrective Services.
- 2.5 Philips Internet-based Customer Support Tools. Philips will provide access to Philips web-based support tool for the System(s) covered under the Service Agreement.

3. INTERFACE SUPPORT

- 3.1 Philips supports the DICOM and HL7 communication to and from the Covered System as they exist at the time of installation. In the case of upgrades, Philips shall provide the following software maintenance Services:
 - 3.1.1 If the Philips Covered System, interoperability mapping engine, or Biomedical Equipment is upgraded to the latest version of the existing application, Philips will restore the inbound / outbound communication to the pre-upgrade condition with like-for-like parameters. If incremental parameters or functionality are available as a result of the upgrade and Customer purchases or chooses to use these parameters or functionality, then Customer shall pay the cost of any additional work required to implement and support the new communication capabilities at Philips' then-current standard labor and material rates for such Service.
 - 3.1.2 Philips' interface support does not include the modification of any interface due to interface changes in third party hardware or software. If a planned upgrade of the Covered System involves modifications to the interface specifications, then Customer shall provide Philips detailed technical information on such modifications at least ninety (90) days in advance of the planned upgrade. And, Philips shall work with the third party to understand changes in interface specifications and format and may modify and upgrade the Covered System to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and Customer. Customer shall pay the cost of any additional work required to implement and support the new interface specifications at Philips' then-current standard labor and material rates for such Service.

4. SOFTWARE UPGRADES, UPDATES, AND FIXES

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

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

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

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

6. CLINICAL EDUCATION

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

7. CUSTOMER SUCCESS MANAGEMENT SERVICES

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

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

requirements, interoperability and other dependencies for the software upgrade.

8. STRATEGY REALIZATION SERVICES

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

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

9. CUSTOMER RESPONSIBILITIES

- 9.1 System Administrator. Customer shall designate an individual(s) to serve as its system administrator ("System Administrator") and an alternate, who will serve as Philips' primary support contacts. These individuals should be familiar with all aspects of training provided by Philips, including end-user and system administrator training. In addition, the Covered System Administrator shall maintain the integrity of the System operation and ensure that proper backup procedures are in place.
- 9.2 Remote Access. Customer must provide necessary remote access, required information, and support for the Covered System to connect to Philips Remote Service (PRS). PRS is the basis for Services delivered under this Exhibit. Customer waives all rights to services and service deliverables under this agreement unless PRS connectivity is enabled and maintained.
- 9.3 Security. Customer is solely responsible for providing adequate security to prevent unauthorized Covered System access to Philips (or its third-party vendors) proprietary and confidential information.
- 9.4 Software Version Levels. Customer must maintain the Covered System at a currently supported version to receive support under this Exhibit.
- 9.5 Hardware Revision Levels. Customer must maintain all associated Covered System hardware, firmware, and middleware at the required revision levels for the software version. To receive software updates and upgrades, Customer must maintain all associated hardware to the then-current specification for the software updates or upgrades.
- 9.6 Data Reconstruction. Customer shall follow the recommended back-up processes as outlined in the System Installation or Reference Guides. Customer is also responsible for the reconstruction, restoration, retrieval, or recovery of any lost or altered patient records, files, programs, or data. Philips is not responsible for the reconstruction, restoration, retrieval, or recovery of any lost or altered files, data, or programs. For an additional charge based upon published labor and material rates, Philips will offer services on a commercially reasonable efforts basis to reconstruct data.
- 9.7 Intermediate Resolutions. Customer shall implement any intermediate resolutions or workarounds as requested by Philips while Philips seeks a long-term resolution.

10. SERVICE LIMITATIONS

- 10.1 Software Restoration. If the software fails and the supported application software requires restoration, then Philips will reinstall the application software, database software, and operating system to the revision level that existed prior to the malfunction or failure and Philips will attempt to reinstall Customer-created data backup. If Customer-created data backup cannot be used to re-install any data to the Covered System, Customer will hold sole responsibility for the loss of data. Custom or third-party software, custom database configurations or reports, and Customer-written product interfaces are not included. If a system failure is attributed to hardware not supported under the Agreement, Customer shall restore the software, operating system, and database software before Philips begins any software restoration efforts. Philips may offer, for an additional charge based upon published labor and material rates, hardware support and software restoration services.
- 10.2 Anti-Virus Statement. Philips' software is a computer-based medical product and, therefore, may be subject to attack by outside computer viruses. The software required to prevent attack by a computer virus must be constantly monitored and updated. Customer shall install and maintain anti-virus software in accordance with the System Installation or Reference Guide. After installing the software, Customer shall have the burden of proof if it claims that Philips introduced a virus discovered in the software. Customer will pay an additional amount based on Philips' then-current time and materials rates for such work in respect of services rendered in connection with a virus that was not introduced by Philips. Philips shall use reasonable efforts to notify Customer if Philips becomes aware of any virus in the software licensed to Customer under this Agreement.
- 10.3 Non-Philips Software Assistance. Requests for assistance with hardware, operating systems, communications network, third party software, printer configuration, etc., are outside the scope of this Agreement. However, if Customer's request, then Philips may provide non-Philips software assistance on a time and materials basis, at Philips then-current time and materials rates, as available.

11. SERVICE EXCLUSIONS

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

- 11.1 Any combining of the Covered System with a non-qualified device. A non-qualified device is:
 - 11.1.1 Any product (hardware, firmware, software, or cabling) not supplied by Philips, whether used internal or external to Covered System without Philips' approval. Examples include, software patches, security fixes, and service packs from the operating system, web browser, or database software manufacturer(s);
 - 11.1.2 Any product supplied by Philips that has been modified by Customer or any third party;

- 11.1.3 Any product maintained under this Agreement in which Customer does not allow Philips to incorporate engineering improvements; or
- 11.1.4 Any product that has reached its "End of Life". "End of Life" means software and or hardware equipment that has surpassed the published end of support life date by the original equipment manufacturer.
- 11.2 Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the Covered System.
- 11.3 If the system covered by this Exhibit is software only, then notwithstanding anything to the contrary in the Agreement or this Exhibit, hardware and parts are not included in the Services.
- 11.4 Any network related problems.
- 11.5 The cost of Consumables, software media, and cassettes.

ATTACHMENT B INSURANCE REQUIREMENTS

Philips agrees to provide insurance set forth in accordance with the requirements herein. If Philips uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Philips agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting any indemnity obligations provided and in addition thereto, Philips shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all employees providing services on behalf of Philips. If Philips has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by their own Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – Philips shall carry General Liability Insurance covering all operations performed by or on behalf of Philips providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Philips is transporting one or more non-employee passengers in performance of Services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Philips owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
 - e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits
or
Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits
 - f. Cyber Liability Insurance – Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as regulatory fines and penalties.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Services. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of three (3) years after contract completion.

2. **Additional Insured.** All policies, except for Worker's Compensation, Cyber Liability, Errors and Omissions and Professional Liability policies shall contain a blanket additional endorsements naming Customer and its officers, employees, agents and volunteers as additional insured with respect to liabilities arising out of the performance of services hereunder. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.12 19.
3. **Waiver of Subrogation Rights.** Philips shall require the carriers of required workers compensation, general liability and auto liability coverages to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Philips and Philips's employees or agents from waiving the right of subrogation prior to a loss or claim. Philips hereby waives all rights of subrogation against Customer.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.
5. **Severability of Interests.** Philips agrees to ensure that the commercial general liability coverage provided to meet these requirements is applicable separately to each insured.

6. **Proof of Coverage.** Philips shall furnish Certificates of Insurance to Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed; additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, Philips shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Philips shall maintain such insurance from the time Philips commences performance of services hereunder until the completion of such services.
7. **Acceptability of Insurance Carrier.** With the exception of the professional and errors and omissions liability policies that are placed in Amsterdam and provide world-wide coverage, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by Philips or Customer payments to Philips will be reduced to pay for Customer purchased insurance.