

**PHILIPS HEALTHCARE**

A division of Philips Electronics North America Corporation

**22100 Bothell Everett Highway****P.O. Box 3003****Bothell, Washington 98041-3003****Tel: (800) 722-7900****Home Office Use Only**

Quote #:	Rev #:
1-18XCRBT	2

Quoted By:	Tina Lindell
Tel:	(916) 730-7841
Fax:	(855) 494-1097

**PHILIPS****Customer Care Solutions Center****Phone: (800) 722-9377**

Contact: Heidi Rigenbach

Contact Phone: (831) 772-7660

**Billing Information****County of Monterey d/b/a****NATIVIDAD MEDICAL CENTER****1441 CONSTITUTION BLVD****SALINAS, CA 93906****Equipment Location****NATIVIDAD MEDICAL CENTER****1441 CONSTITUTION BLVD****SALINAS, CA 93906**

IMPORTANT NOTICE: 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 under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).

**Site Id:** 64900259**Prod Desc:** MobileDiagnost wDR 2**\*Service to commence at a time of system warranty expiration\*****Philips RightFit Service Agreement Primary**

Thank you for the opportunity to provide this proposed Philips RightFit Service Agreement. Our Primary Service Agreement offers you the advantage of flexible service, a hands-on relationship with Philips, and open communications.

**SERVICE DELIVERY:**

- 98% uptime guarantee for each contract year. This provides assurance of the equipment availability to scan patients as described in the uptime guarantee exhibit.

**LABOR:**

- Labor and travel coverage for on-site service from 8:00 am - 5:00 pm, Monday - Friday, excluding Philips published holidays.
- Preferential Scheduling of service calls for service contract customers.
- On-site Response. At customer's request, Philips service goal is to be on-site within 4 hours.
- Planned maintenance coverage from 8:00 am - 5:00 pm, Monday - Friday, excluding Philips published holidays. Coverage includes activities performed according to a schedule to review safety, image quality, calibrations, equipment cleaning, performance trials and any other planned service prescribed by Philips. Philips current recommendation for DXR systems is 1 -2 times per year depending on the specific product model.
- Preferred rates for labor and travel. This includes reduced hourly rates for labor and travel for corrective or planned maintenance outside of Service Agreement coverage hours.

**PARTS:**

- Standard parts coverage. This provides coverage on parts to maintain and repair the equipment, including both hardware and software items.
- 10:30 am next day parts delivery. This provides UPS next day delivery by air, available in most areas. (Actual time depends on local shipper delivery schedule and delivery restrictions for oversized or hazardous parts).

**LIFECYCLE:**

- Operating system software and hardware reliability updates. This includes on-site or remote labor, travel and parts necessary to complete safety, performance and reliability modifications to existing equipment software or hardware.
- 15% discount on any items selected from Philips Life Solutions catalog, excluding power monitoring.

**CUSTOMER CARE SOLUTIONS CENTER:**

- 24/7 Technical telephone support.
- Clinical telephone support from 8:00 am - 5:00 pm, Monday - Friday.
- Remote Services. This supports remote system diagnostics and monitoring. Philips equipment is connected via an Internet secure single point of access network to our solutions center as described in the Terms and Conditions exhibit. Features may vary by equipment and software release level.

**Quotation #: 1-18XCRBT****Rev.: 2****Page 1 of 11****Quote Issue Date: 06/01/2015****Quote Valid To Date: 07/31/2015**

## SOLUTION ENHANCEMENTS:

- Philips Service Information. Available upon request, this contains important service management reports through a secure Internet site. Information on equipment service status, historical service performance, engineer response time, and planned maintenance schedules is available.

## NOTES:

- ProGrade quotations are valid only with a contract on the BuckyDiagnost.

## Selected Options:

### Wireless Detector Coverage

Qty: 1

- Wireless detector coverage provides repair and replacement for mechanical defects AND damages resulting from accidental drops, including accidental drops during the warranty period.

### Wireless Portable Detector Battery Coverage

Qty: 1

- Provides coverage for Wireless Portable Detector battery replacement
- Requires purchase of 48-month RightFit service agreement (minimum RightFit Assist), AND WPD Coverage Option

### Glassware Coverage X-Ray Tube(s)

Comprehensive parts and labor support for X-Ray tube(s) and camera tube (when applicable).

Site Id: 64900260	Prod Desc: MobileDiagnost wDR 2
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## \*Service to commence at a time of system warranty expiration\*

## Philips RightFit Service Agreement Primary

Thank you for the opportunity to provide this proposed Philips RightFit Service Agreement. Our Primary Service Agreement offers you the advantage of flexible service, a hands-on relationship with Philips, and open communications.

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##### Glassware Coverage X-Ray Tube(s)

Comprehensive parts and labor support for X-Ray tube(s) and camera tube (when applicable).

Site Id: 64900261	Prod Desc: MobileDiagnost wDR 2
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#### \*Service to commence at a time of system warranty expiration\*

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#### CUSTOMER CARE SOLUTIONS CENTER:

Quotation #: 1-18XCRBT

Rev.: 2

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Quote Issue Date: 06/01/2015

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Prod Desc: MobileDiagnost wDR 2

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**NOTES:**

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- Requires purchase of 48-month RightFit service agreement (minimum RightFit Assist), AND WPD Coverage Option

**Glassware Coverage X-Ray Tube(s)**

Comprehensive parts and labor support for X-Ray tube(s) and camera tube (when applicable).

**Summary of Payment Terms****Select Payment Term Desired**

Custom Site# 64900259- 48 Monthly Payments of \$1,898 (Effective 5/7/2016-5/6/2020) Total Net \$91,104

Site# 64900260- 48 Monthly Payments of \$1,898 (Effective 5/14/2016- 5/13/2020) Total Net \$91,104

Site# 64900261- 48 Monthly Payments of \$1,898 (Effective 4/15/16-4/14/2020) Total Net \$91,104

Site# 64900262- 48 Monthly Payments of \$1,898 (Effective 5/13/16-5/12/2020) Total Net \$91,104

Total Net \$364,416

**Tax May Be Added, If Applicable****Buying Group:** NOVATION**Contract #:** XR0015 RAD

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Phillips' Terms and Conditions of Sale will apply to the quoted solution.

For services performed outside the contract hours of coverage, Phillips will request a Purchase Order before dispatching a Field Service Engineer.

Our facility does not issue formal purchase orders. We authorize payments 'in lieu of a Purchase Order' for the equipment as described in Phillips Healthcare Service Agreement. Initialed: \_\_\_\_\_

Our facility does issue formal purchase orders, however, due to our business/system limitations, we cannot issue a formal purchase order until \_\_\_\_\_ days prior to warranty expiration. Initialed: \_\_\_\_\_

**Customer Agreement As Quoted**

"Upon customer signing and acceptance by an authorized Philips representative in Bothell Washington, this document constitutes a contract and customer agrees to be bound by all the terms hereof, which include IMPORTANT LIMITATIONS OF LIABILITY."

**BY: X**

Customer Signature

Printed Name

Title

Date ^

Home	Other	
Office	Sub-Total	
Use	Tax	
Only	Total	

Philips by it's acceptance hereof, agrees to provide maintenance services for the equipment listed above in accordance with the following terms.

Signature

Title

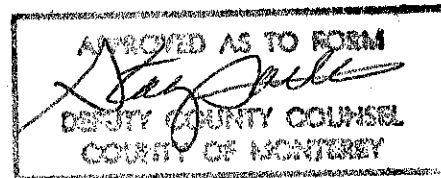
Date

This quotation contains confidential and proprietary information of Philips Healthcare and is intended for the use only by the customer whose name appears on this quotation. It may not be disclosed to third parties without the prior written consent of Philips Healthcare.

Reviewed as to fiscal provisions

*Sam Dally*  
Auditor-Controller  
County of Monterey

6/15/15



# Service Agreement Terms and Conditions

## PHILIPS HEALTHCARE SERVICE AGREEMENT TERMS AND CONDITIONS

### 1. SERVICES PROVIDED

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

### 2. EXCLUSIONS

The Services do not include:

- 2.1 Servicing or replacing components of the system/Equipment other than those systems or components listed in the Exhibits (the "System") that is at the listed location ("Site");
- 2.2 Servicing System if contaminated with blood or other potentially infectious substances;
- 2.3 Any service necessary due to:
  - (i) a design, specification or instruction provided by Customer or Customer representative;
  - (ii) the failure of anyone to comply with Philips' written instructions or recommendations;
  - (iii) any combining of the System with other manufacturers product or software other than those recommended by Philips;
  - (iv) any alteration or improper storage, handling, use or maintenance of the System by anyone other than Philips' subcontractor or Philips;
  - (v) damage caused by an external source, regardless of nature;
  - (vi) any removal or relocation of the System; or
  - (vii) neglect or misuse of the System;
- 2.4 Any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors.

### 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 System, product or part is decontaminated prior to service, shipping or trade-in as per the Instructions in the User manual;
- 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, incoming water quality, and fire protection system);
- 3.4 Use the System in accordance with the published manufacturer's operating instructions.

### 4. SYSTEM AVAILABILITY

If Customer schedules service and the system is not available at the agreed upon time, then Philips may cancel the service or charge the Customer at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the System.

### 5. PAYMENT

All payments under this Agreement are due thirty (30) days from the date of Philips' invoice until the Agreement amount and all applicable taxes and interest are paid in full. Customer will pay interest on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law.

### 6. EXCUSABLE DELAYS

Philips is excused from performing under this Agreement when Philips' delay or failure to perform is caused by events beyond Philips' reasonable control including, but not limited to, acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, terrorism, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities.

### 7. TERM AND TERMINATION

- 7.1 The term of this Agreement shall be set forth in the quotation(s) attached hereto and incorporated herein.
- 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 this Agreement upon 60 days written notice to Philips (i) representing that the System is being permanently removed from the Site and that the System is not being used in any other Customer site, or (ii) 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 60 day notice period.
- 7.3 In addition, if the Customer sells or otherwise transfers any of the System to a third party and the System remains installed and in use at the same location, but such third party does not assume the obligations of the Customer under this Agreement or enter into a new service agreement with Philips with a term at least equal to the unexpired term of this Agreement, then the Customer may terminate this Agreement with respect to such System upon no less than thirty (30) days prior written notice to Philips, in which case the Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to 30% of the remaining payments due under this Agreement for such System from the date of termination through the scheduled expiration of the term of this Agreement.
- 7.4 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.

### 8. DEFAULT

Customer's failure to pay any amount due under this Agreement within 30 days of when payment is due constitutes a default of this Agreement and all other agreements between Customer and Philips. In such an event, Philips may, at its option, (i) withhold performance under this Agreement and any or all of the other agreements until a reasonable time after all defaults have been cured, (ii) declare all sums due and to (iii) commence collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, and reasonable attorney's fees, (iv) terminate this Agreement with 10 days' notice to Customer, and (v) pursue any other remedies permitted by law.

### 9. END OF LIFE

If Philips determines that its ability to provide the Service Coverage is hindered due to the unavailability of parts or trained personnel, or that the system can no longer be maintained in a safe or effective manner as determined by Philips, then Philips may terminate this Agreement upon notice to the Customer and provide Customer with a refund of any Customer pre-payments for periods of Service Coverage not already completed.

### 10. WARRANTY DISCLAIMER

Philips' full contractual service obligations to Customer are described in this Agreement. Philips provides no additional warranties under this Agreement. All service and parts to support service under this Agreement are provided AS IS. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY PHILIPS' SUBCONTRACTOR OR PHILIPS.

### 11. LIMITATIONS OF LIABILITY AND DISCLAIMER

- 11.1 Philips' total liability, if any, and Customer's exclusive remedy with respect to the Services or Philips' performance of the Services is limited to an amount not to exceed the price stated in this Agreement for the Service that is the basis for the claim. THIS LIMITATION SHALL NOT APPLY TO THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE. PHILIPS WILL HAVE NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS AGREEMENT.
- 11.2 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.

### 12. PROPRIETARY SERVICE MATERIALS

Philips may deliver or transmit certain proprietary service materials (including software, tools and written documentation) 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 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 provision.

### 13. THIRD PARTY MANAGEMENT

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.

#### **14. TAXES**

Any applicable tax will be invoiced to and payable by Customer, along with the Agreement Price in accordance with the payment terms set forth in this Agreement, unless Philips receives a tax exemption certificate from Customer which is acceptable to the taxing authorities. Customer will not be obligated to pay any federal, state, or local tax imposed upon or measured by Philips' net income.

#### **15. INDEPENDENT CONTRACTOR**

Philips is Customer's independent contractor, not Customer's employee, agent, joint venture, or partner. Philips' employees and Philips subcontractors are under Philips' exclusive direction and control. Philips has no liability or responsibility for and does not warrant customer's or customer's employees' act or omissions related to any services that are performed by customer's employees under this agreement.

#### **16. RECORD RETENTION AND ACCESS**

If Section 1861(v)(1)(I) of the Social Security Act applies to this Agreement, then Subsections (i) and (ii) of that Section are made a part of this Agreement. In such an event, Philips shall retain and make available, and insert the requisite clause in each applicable subcontract requiring Philips subcontractor to retain and make available, the contract(s), book(s), document(s), and record(s) to the person(s), upon the request(s) for the period(s) of time required by these Subsections.

#### **17. HIPAA, PRIVACY**

Philips complies with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Upon Customer request Philips will provide a mutually agreeable Business Associates agreement. In the course of providing the Services to Customer, Philips may need to access, view, or download computer files from the 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 both personal health information (e.g., images, heart monitor data, and medical record number) and non-health information (e.g., date of birth and gender). Philips will process Personal Data only to the extent necessary to fulfill its Service obligations under this Agreement.

#### **18. CONFIDENTIALITY**

Each party will maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, or its patients, and this Agreement and its terms, including its pricing terms. Each party will 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 not less than reasonable care. Each party will disclose such information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement. The obligation to maintain the confidentiality of such information will not extend to information in the public domain at the time of disclosure, or to information that is required to be disclosed by law or by court order and will expire five years after the Exhibit terminates or expires.

#### **19. SUBCONTRACTS AND ASSIGNMENTS**

Philips may subcontract to service contractors of Philips' choice any of Philips' service obligations to Customer or other activities performed by Philips under this Agreement. No such subcontract will release Philips from those obligations to Customer. Customer may not assign this Agreement or the responsibility for payments due under it without Philips' prior express written consent, which will not be unreasonably withheld.

#### **20. INSURANCE**

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

#### **21. RULES AND REGULATIONS**

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.

#### **22. EXCLUDED PROVIDER**

Philips represents and warrants that Philips, its employees, and subcontractors, are neither debarred, excluded, suspended, or otherwise ineligible to participate in a federal 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 becomes an Excluded Provider, whereupon Customer may terminate this order by express written notice for services not yet rendered.

#### **23. SOLICITATION OF PHILIPS EMPLOYEES**

For the duration of this Agreement and for one year following the expiration or termination of this Agreement, Customer and its affiliates will not directly or indirectly solicit any employee of Philips or its affiliates engaged in providing the services.

#### **24. SURVIVAL, WAIVER, SEVERABILITY, NOTICE, CHOICE OF LAW**

Customer's obligation to pay any money due to Philips under this Agreement survives expiration or termination of this Agreement. All of Philips' rights, privileges, and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement. A party's failure to enforce any provision of this Agreement is not a waiver of that provision or of such party's right to later enforce each and every provision. If any part of this Agreement is found to be invalid, the remaining part will be effective. Notices or other communications will be in writing, and will be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth on the face of this Agreement. This Agreement may be executed in one or more counterpart copies, each of equal validity, that together constitute one and the same instrument. Any photocopy or facsimile of this Agreement or any such counterpart is deemed the equivalent of an original and any such facsimiles constitute evidence of the existence of this Agreement. The law of the state in which the System is located will govern any interpretation of this Agreement and dispute between Philips and Customer without regard to the principles of choice of law.

#### **25. ENTIRE AGREEMENT; EXHIBITS**

This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, written or oral, regarding its subject matter. No additional terms, conditions, consent, waiver, alteration, or modification will be binding unless in writing and signed by Philips' authorized representative and Customer. Additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are rejected and will not apply to the transactions contemplated by this Agreement. No prior proposals, statements, course of dealing, course of performance, usage of trade or industry standard will be part of this Agreement. The service specific exhibits listed below, and any associated attachments, are incorporated herein as they apply to the services listed on the quotation 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 schedule shall govern.

- Exhibit 1: Additional Imaging System Service Terms and Conditions
- Exhibit 2: Philips Technology Upgrades
- Exhibit 3: Additional Support & Assist Coverage Terms and Conditions
- Exhibit 4: Uptime Guarantee
- Exhibit 5: Additional Clinical Education Training Terms and Conditions
- Exhibit 6: Additional Rightfit Software Maintenance Agreement Terms and Conditions
- Exhibit 7: Rightfit Software Maintenance Agreement Hardware Support
- Exhibit 8: Additional Patient Care Services Terms and Conditions

#### **26. AUTHORITY TO EXECUTE**

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.

21594h v1 (rev040414)



# ADDITIONAL IMAGING SYSTEM SERVICE TERMS AND CONDITIONS

## Exhibit 1

### (for Philips and/or Non-Philips Equipment)

#### 1. SERVICES PROVIDED

**1.1. Initial Covered System Inspection.** Within 90 days after the Effective Date, Philips will inspect the Covered System not previously serviced by Philips and notify Customer of any covered system that does not meet manufacturer's specification. Philips will provide Customer a written estimate for repairs necessary to bring any of the covered system within proper manufacturer's specifications. Upon Customer's request, Philips will provide necessary repairs at Philips' then contract labor rate. If customer elects not to have System repaired, then Philips may remove such System from coverage in this agreement.

**1.2 Repair Service.** Commencing on the Effective Date and subject to the repair limitation below, Philips or Philips' subcontractors will provide repair services for Covered System. Philips will provide all replacement parts, which may be refurbished, and labor necessary to repair Covered System, unless excluded in paragraph 3. All components used are subject to Philips inspection and quality control procedures, and shall be warranted to the same extent that a non-refurbished component is warranted. Parts removed for replacement become the property of Philips and Philips shall remove parts from the System Site. Philips may increase its contract price if the System is upgraded or reconfigured.

**1.3. Planned Maintenance Service.** Philips will provide Customer a planned maintenance schedule for the Covered System. Philips will provide such planned maintenance during the Service Coverage hours (as defined in the agreement) at a time that is mutually agreed upon. Customer will make the Covered System available in accordance with this schedule. Philips or its subcontractors will provide planned maintenance on the Covered System at scheduled intervals. If Philips cannot locate Covered System, or Covered System was not made available for planned maintenance when scheduled, Philips will notify the Customer that Customer has 90 days to make available Covered System for planned maintenance, otherwise customer waives right to service and Philips may delete Covered System from the contract.

**1.4. Software Updates.** Philips will install operating system software updates provided by the Original Equipment Manufacturer (OEM) for Covered System. Software updates mean revisions to OEM proprietary operating system software that enhance existing System functions and operation without hardware changes, but will not install operating system software upgrades to new software platforms or software options offered separately for sale by the OEM.

#### 2. CONTRACT ADMINISTRATION

**2.1. System Additions and Deletions.** After completing the inspection, Customer may add a System to the Covered System list by contacting Philips. Customer and Philips will agree on a mutually-agreeable price and contract start date. The covered System will be added to the contract after receipt of the signed inventory modification form. Customer may delete Covered System only if: (i) Customer permanently removes it from operation or (ii) it is no longer under Customer's exclusive ownership or control and Customer notifies Philips in writing. The covered System will be deleted from the contract after receipt of the signed inventory modification form.

**2.2. Management and Staffing.** If on-site staffing is provided, Philips will determine and provide the management and service staff necessary to provide the Services under this Exhibit. Philips will pay all salaries, payroll and other employment taxes or fees, worker's compensation insurance, and other charges or insurance levied or required by any federal, state, or local statutes, relating to its employees.

**2.3.** If applicable, customer shall execute the Subcontracting Confirmation and Agency Authorization Agreement as required by Philips to perform certain duties and responsibilities included within this Exhibit.

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

**3.1.** Any rigging or structural alteration incident to the Services;

**3.2.** Consumable items and supplies (such as biomedical laser tubes and patient used pads), cryogens, PET calibration sources, film, batteries, cassettes;

**3.3.** Cosmetic repairs;

**3.4.** The cost of factory reconditioning, rebuilds, or overhauls if repairs cannot maintain the equipment in satisfactory operating condition;

**3.5.** Disposing hazardous, infectious, or biomedical waste or materials;

**3.6.** Providing service to any System under a current service agreement between Customer and another vendor until such agreements expire or are terminated by Customer. Philips is not liable for any cancellation penalty or cost associated with Customer's termination of any such agreement;

**3.7.** Unless otherwise specified in the quotation, maintaining or repairing third-party products including but not limited to nuclear camera detector crystals, CT Tubes and radiation therapy tubes, x-ray tubes, flat panel detectors, Image Intensifiers magnet replacement, magnet refrigeration system (coldhead, compressor, chillers), MR RF rooms, surface coils HVAC systems, power conditioners, uninterruptible power supplies, special ultrasound transducers (probes) (accessory or attach), TEE probes, TV camera pick-up tubes, photo multiplier tubes, accelerator center beam lines, piped medical gases (up to the wall outlets), copier drums, electron guns, fiber optic bundles, foot/hand controls (switches, accessory, or attachment), klystrons and thyratrons, magnetrons, plumbicons, waveguides, and attachments.

**3.8.** If this agreement includes coverage for biomedical services: arthroscopy instruments, blood pressure cuffs (accessory or attachment), centrifuge motor brushes, electronic thermometer probes, electrosurgical instruments (pencils & pads), general or surgical instruments, laboratory glass, laser tubes, phaco hand pieces (cataract extraction units, accessory or attachment), non-electrical surgical equipment, rigid & semi-rigid scopes.

**4. COVERAGE** Philips will provide services on-site during the hours listed in Customer's service agreement, excluding Philips observed holidays, unless otherwise set forth in attachments or exhibits ("Service Coverage"). Customer may request service outside of the Service Coverage or service that is not otherwise included in this Agreement and, subject to the availability of personnel and repair parts, Philips will provide such service at Philips's then-current preferred rates and for material and labor. Customer will be charged a minimum of three hours on-site time plus applicable travel charges and expenses per service visit.

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

**6. CUSTOMER RESPONSIBILITIES** During the term of this Agreement Customer will

**6.1** Attend a start-up meeting at Customer's facility, prior to the Effective Date of this Agreement, so Philips can explain the Services to the Customer's management and selected staff;

**6.2** Provide a secure dedicated space within Customer's main facility and at each additional facility or location as necessary for the resident Philips staff.

**6.3** Provide Philips with broadband Internet or Wi-Fi access for business purposes.

**6.4** Provide Philips with the System service manuals for any non-Philips System;

**6.5** Maintain all software licenses applicable to the Covered System.

**6.6** For Philips use in remote servicing of the System, provide Philips a secure location for hardware to connect System to Philips Remote Service (PRS).

**6.6.1** The PRS hardware remain Philips' property and is only provided during the term of this Agreement;

**6.6.2** Provide Philips and its vendors full and free access to the PRS hardware to enable Philips to remotely access the System or non-Philips System; and

**6.6.3** Provide Philips at each System Site, at all times during the term of this Agreement, a dedicated broadband Internet access node, including public and private interface access, suitable to establish a successful connection to the System through the PRS and Customer network..

**6.6.4** If the System cannot be connected to the PRS, and Customer fails to provide the access described in section 6, then Customer waives its rights to Services under this Agreement and any uptime guarantee.

#### 7. CRYOGENS (Applies only to MRI Service)

**7.1.** If Cryogens are included in this agreement, Customer shall report any magnet cooling system (cold-head, compressor, or chiller) malfunction within 24 hours. If customer fails to report any malfunctions or provide continuous chilled water or power, then customer is responsible for any additional cryogen expenses.

**7.2.** If the System is not connected to the PRS, then Customer shall report Cryogen level readings for all System covered by this Agreement into the Magnet Monitoring System at 1-800-722-9377 (follow prompts) each week.

# UPTIME GUARANTEE

## Exhibit 4

### 1. GENERAL

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

### 2. DEFINITIONS

**a. Measurement Period:** The measurement period for determining Uptime Percentage is 12 months beginning on the effective date of the Agreement and thereafter on the annual anniversary date of the effective date.

**b. Base Hours** means the hours/day and days/week over which Uptime Hours and Downtime will be calculated during the Measurement Period. The Base Hours will be the contracted hours of coverage provided for under the Agreement for each particular piece of Uptime System.

**c. Downtime** means the time that the Uptime System is unable to produce diagnostic images during the Base Hours of any given Measurement Period solely due to Philips' design, manufacturing, materials, or Service performance failure. Measurement of Downtime commences when the Customer notifies the Philips customer service center that the Uptime System is unable to produce diagnostic images. Downtime does not include time due to planned maintenance service, cryogen replenishment, installation of upgrades and updates, x-ray tube replacement, or an occurrence or condition excluded under the Agreement. Philips may verify Downtime and adjust calculations accordingly.

**d. Uptime Hours** is determined by subtracting the total Downtime from the Base Hours for a particular piece of Uptime System [Uptime Hours = Base Hours – Downtime].

**e. Uptime Percentage** is determined by dividing the Uptime Hours by the Base Hours, and multiplying the result by 100 [Uptime Percentage = (Uptime Hours/Base Hours) x 100].

### 3. ADJUSTMENT SCHEDULE

If the Uptime Percentage specified in Schedule 3(a) is not achieved for Uptime System then the specified discount will be applied to all payments due during the next Uptime Measurement Period for the Uptime System that did not achieve the Uptime Percentage

Schedule 3(a): Agreement Payment Adjustment Schedule for Uptime System

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

\* Maximum adjustment available



## ADDENDUM TO SERVICE TERMS & CONDITIONS

Philips Healthcare, a division of Philips North America Corporation ("Philips") and County of Monterey -d/b/a Natividad Medical Center ("Customer") agree to amend the Service Agreement Terms and Conditions (Quote No. 1-18XCRBT and 1-14JSFY8) ("Agreement") between them. If there are any conflicts between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall control. All paragraph(s) specifically listed below supersede the same numbered paragraph(s) as listed in the Agreement. Capitalized terms used herein and not otherwise defined herein, unless the context otherwise requires, shall have the same meanings set forth in the Agreement.

**Quotation:** Delete the confidentiality provision on the quotation referenced above and refer to Section 27 of this Addendum.

**1. SERVICES PROVIDED.** The services listed in the quotation (the "Services") are offered by Philips Healthcare, a division of Philips Electronics North America Corporation ("Philips") under the terms and conditions described, and on any exhibits and attachments, each of which are hereby incorporated (the "Agreement").

**2. EXCLUSIONS.** The Services do not include:

- 2.1. Servicing or replacing components of the system other than those systems or components listed in the Exhibits (the "System") that is at the listed location ("Site");
- 2.2. Servicing System if contaminated with blood or other potentially infectious substances;
- 2.3. Any service necessary due to:
  - (i) a design, specification or instruction provided by Customer or Customer representative; (ii) the failure of anyone (excluding Philips or a Philips representative) to comply with Philips' written instructions or written recommendations;
  - (iii) any combining of the System with other manufacturers product or software other than those recommended by Philips;
  - (iv) any alteration or improper storage, handling, use or maintenance of the System by anyone other than Philips' subcontractor or Philips;
  - (v) damage caused by an external source, regardless of nature;
  - (vi) any removal or relocation of the System; or
  - (vii) neglect or misuse of the System;
- 2.4. Any cost of materials, supplies, parts, or labor supplied by any party other than Philips or Philips' subcontractors.

**4. SYSTEM AVAILABILITY.** If Customer schedules service and the system is not available at the agreed upon time, and does not reschedule prior to Philips appearing, then Philips may cancel the service or charge the Customer at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the System. This shall not apply in the event the delay is due to a life threatening patient emergency, at which time, service shall be rescheduled.

**5. PAYMENT.** All undisputed payments, under this Agreement, are due thirty (30) days from the date of Customer's receipt by the County Auditor Controller of a certified copy of the Philips' invoice (prepared by Natividad Medical Center) until the Agreement amount and all applicable taxes and interest are paid in full. If the invoice consists of more than one line item, Customer shall remit full invoice payment owed less the disputed line item amount. Customer shall notify Philips, in writing, of details relating to any disputed balances within 30 days of invoice date. Correspondence relating to disputes should be addressed to:

Philips Healthcare  
22100 Bothell Everett Hwy.  
Bothell, WA 98021

Attn: Accounts Receivables  
Philips Healthcare  
22100 Bothell- Everett Highway - MS450  
Bothell, WA 98021

**6. EXCUSABLE DELAYS.** In the event that either party shall be delayed or hindered in or prevented from the performance of an obligation hereunder (except for payment hereunder) by events beyond the other party's reasonable control including, but not limited to, acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, terrorism, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any government act, regulation or request, then performance of such act shall be excused for the period of such excusable delay. Each party agrees to give the other party prompt written notice of the occurrence of any excusable delay, the nature thereof, and the extent to which the affected party will be unable to fully perform its obligations hereunder. Each party further agrees to use reasonable efforts to correct the excusable delay as quickly as possible and to resume performance hereunder promptly upon cessation of the excusable delay.

**7. TERM AND TERMINATION**

**7.1.** The term of this Agreement shall be set forth in the quotation(s) attached hereto and incorporated herein.

**7.2.** Except as described in this Paragraph, this Agreement is non-cancelable by Customer and will remain in effect for the term specified in this Agreement. However, Customer may cancel this Agreement upon 60 days written notice to Philips (i) representing that the System is being permanently removed from the Site and that the System is not being used in any other Customer site, or (ii) 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 60 day notice period.

**7.3.** In addition, if the Customer sells or otherwise transfers any of the System to a third party and the System remains installed and in use at the same location, but such third party does not assume the obligations of the Customer under this Agreement or enter into a new service agreement with Philips with a term at least equal to the unexpired term of this Agreement, then the Customer may terminate this Agreement with respect to such System upon no less than thirty (30) days prior written notice to Philips, in which case the Customer shall pay to Philips (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to 30% of the remaining payments due under this Agreement for such System from the date of termination through the scheduled expiration of the term of this Agreement.

**7.4. TERMINATION FOR NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision of this Agreement, if Federal, State or local government terminates or reduces its funding to the Customer for services that are to be provided under this Agreement, Customer, in its sole and absolute discretion after consultation with Philips, may elect to terminate this Agreement by giving 90 days written notice of termination to Philips. Alternatively, County and Philips may mutually agree to amend the Agreement in response to a reduction in Federal, State or local funding.

**8. DEFAULT.** Customer's failure to pay any undisputed amount due under this Agreement within 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 and to (iii) commence collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, and reasonable attorney's fees, (iv) terminate this Agreement with 10 days' notice to Customer, and (v) pursue any other remedies permitted by law.

**9. END OF LIFE.** If Philips determines that its ability to provide the Service Coverage is hindered due to the unavailability of parts or trained personnel, or that the system can no longer be maintained in a safe or effective manner as determined by Philips, then Philips may terminate this Agreement upon notice to the Customer and provide Customer with a refund of any Customer pre-payments for periods of Service Coverage not already completed.

**10. WARRANTY DISCLAIMER.** Philips' full contractual service obligations to Customer are described in this Agreement. Philips provides no warranties under this Agreement. All service and parts to support service under this Agreement are provided AS IS. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY PHILIPS' SUBCONTRACTOR OR PHILIPS.

10.1 Professional Competency. Philips represents and warrants that all Services to be provided under this Agreement shall be performed in a professional, competent, and timely manner by appropriately qualified personnel in accordance with this Agreement and consistent with Philips' applicable best practices

**11. LIMITATIONS OF LIABILITY AND DISCLAIMER.**

11.1 Both party's total liability, if any, and Customer's exclusive remedy with respect to 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 that is the basis for the claim. THIS LIMITATION SHALL NOT APPLY TO THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE. PHILIPS WILL HAVE NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS AGREEMENT.

11.2 IN NO EVENT SHALL EITHER PARTY 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.

11.3 INDEMNIFICATION. Philips shall indemnify and hold harmless Customer and its officers and employees from any claims for loss, cost, damages, expense or liability (including reasonable attorney fees) by reason of bodily injury (including death) or tangible property damage (representing the actual cost to repair or replace physical property damage), to the extent such damages result from Philips' negligent acts or omissions, or proven product defect. This indemnification obligation will not be subject to the limitation of liability in Philips' Terms and Conditions.

Nothing herein is intended to limit or relieve Philips from liability for third party claims relating to personal injury, death, or tangible property damage to the extent caused by Philips' or its' employees' or agents' wrongful or negligent acts or omissions.

**18. CONFIDENTIALITY.** Subject to Paragraph #27 below, each party will maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, or its patients, and this Agreement and its terms, including its pricing terms. Each party will 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 not less than reasonable care. Each party will disclose such information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement. The obligation to maintain the confidentiality of such information will not extend to information in the public domain at the time of disclosure, or to information that is required to be disclosed by law or by court order and will expire five years after the Exhibit terminates or expires.

**19. SUBCONTRACTS AND ASSIGNMENTS.** Philips may subcontract to service contractors of Philips' choice any of Philips' service obligations to Customer or other activities performed by Philips under this Agreement. No such subcontract will release Philips from those obligations to Customer.

In the event Customer determines that a Philips employee and/or Third Party Representative is providing unsatisfactory services in performing Philips' obligations, as outlined in the Agreement, Customer shall notify Philips in writing. Philips shall have a seven (7) calendar days following receipt of Customer's written request to resolve any problems with respect to such individual in a manner that is satisfactory to Customer, including but not limited to removal of such individual from site.

Philips Healthcare  
22100 Bothell Everett Hwy.  
Bothell, WA 98021

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.

**25. ENTIRE AGREEMENT; EXHIBITS.** This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, written or oral, regarding its subject matter. No additional terms, conditions, consent, waiver, alteration, or modification will be binding unless in writing and signed by Philips' authorized representative and Customer. Additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are rejected and will not apply to the transactions contemplated by this Agreement. No prior proposals, statements, course of dealing, course of performance, usage of trade or industry standard will be part of this Agreement. The service specific exhibits listed below, and any associated attachments, are incorporated herein as they apply to the services listed on the quotation 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 schedule shall govern.

Exhibit 1: Additional Imaging System Service Terms and Conditions  
Exhibit 2: Intentionally deleted; N/A to this Agreement  
Exhibit 3: Intentionally deleted; N/A to this Agreement  
Exhibit 4: Uptime Guarantee  
Exhibit 5-8: Intentionally deleted; N/A to this Agreement

**27. OPENS RECORD ACT.** It is understood that Philips considers some information it provides to the Customer as confidential, competitive or trade secret information and that Philips would not provide the County access without the Customer's commitment to protect the information. Customer is subject to the California Public Records Act ("PRA"). This Agreement is a public record and may be disclosed by Customer in its entirety pursuant to a request under the PRA, without notifying Philips. Notwithstanding any other provision of this Agreement, compliance with the PRA shall not be considered a violation of this Agreement. If the Customer receives a PRA request for Philips information that has been marked by Philips as confidential, competitive or trade secret information, the Customer will send Philips written notice of the request before releasing the information, so that Philips has an opportunity to promptly litigate the disclosure. If the Customer's determination of exemption is challenged, the Customer will send Philips written notice of the challenge, allowing Philips the opportunity to promptly litigate the challenge. The County is not compelled by this Agreement to litigate a PRA request issue."

The parties to this Agreement have signed this Addendum by their duly authorized officers on the date written below.


**For Philips**

  
Signature  
Kim Graham

Printed Name  
Service Contracts Manager

Title  
Date 6/3/15

Reviewed as to fiscal provisions

  
Auditor-Controller  
County of Monterey

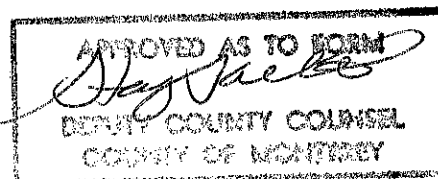
**For Natividad Medical Center**

Signature

Printed Name

Title

Date



kmg