

**PHILIPS HEALTHCARE**

A division of Philips North America LLC

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

Home Office Use Only	
Quote #:	Rev #:
1-1GMPHP5	4
Quoted By:	Tina Lindell
Tel:	(916) 730-7841
Fax:	(855) 494-1097

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

Contact: Heidi Riggenschach

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:****Prod Desc: DoseWise Portal solution****Service Effective Date: 03/01/2018****Service Expiration Date: 02/28/2023****DoseWise Portal Subscription**

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**DoseWise Portal Dose Management Tracking Software.**

DoseWise Portal is part of a comprehensive approach to monitoring and managing patient and staff radiation dose and provides cumulative dose tracking for patients, an essential part of adhering to the ALARA principle. DoseWise Portal helps healthcare providers make a commitment to cumulative dose tracking effectively and efficiently, thus improving quality of care without affecting productivity. DoseWise Portal, with its extensive feature set, includes robust dosimetry information and tools that can be used throughout the entire radiology workflow -- to the ordering physician, radiologist, technologist, clinical physicist, radiation safety officer and administration.

**I. Product Description and Entitlements****Features and Benefits:****• Radiation Dose Monitoring**

- ° Radiation dose monitoring for all X-ray modalities: CT, fluoroscopy / angiography, CR/DR, mammography for a fixed number of imaging system connections and locations as specified within this quotation.
- ° Unlimited study volume for any supported modality
- ° Collection and analysis of radiation dose data
- ° Intelligent reporting that supports initiatives in the following areas:

- Evaluating patient safety
- Regulatory reporting
- Quality assurance
- Accreditation
- Utilization management
- Patient education
- Communication

**• Robust Dosimetry Information and Tools**

- ° Information and tools that are available throughout the entire radiology workflow
- ° Effective Dose estimating capability based on ICRP 103 or ICRP 60 definitions
- ° Automatic calculation of CT Size Specific Dose Estimates (SSDE) using water equivalent diameter per AAPM Report 204
- ° Protocol Standardization capability
- ° Customized dose alert levels and thresholds by exam, with optional email notification
- ° Historical patient dose data across imaging modalities
- ° Ability to export DICOM-SR to ACR Dose Index Registry
- ° Ability to export procedure dose text into dictation text through integration with leading dictation vendors
- ° Simple, interactive and customizable graphing tools to create patient data charts
- ° Single dashboard overview of your custom created graphs and charts

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• **Extensive Feature Set**

- Role-based log-in for individualized content (medical physicist, site administrator, radiologist)
- Filtering of data by site, department and modality
- Full range of data attributes per modality, conveniently displayed on an overview page
- Extraction of dose data from DICOM-SR, DICOM-SC (for OCR), MPPS, image headers
- Reconciliation of patient information through DICOM Modality Worklist (MWL)
- Data received directly from the modality or from PACS
- Conformance with IHE REM profile

• **Software Updates**

Software updates are provided to the extent made commercially available during the subscription license term.

• **Remote Technical Support**

Remote technical support on DoseWise Portal is provided Monday through Friday from 8am to 5pm EST. All inbound connections and support to be maintained by the customer.

• **Software Implementation**

This offer includes professional software implementation project management and remote installation.

• **Super User Training**

Hands-on training for a Super User is provided for eight hours.

• **Educational Webinars and Events**

Invitations to educational webinars and events, as they become available are included.

• **Integration with Philips DoseAware Xtend**

Integration with Philips DoseAware Xtend for monitoring of occupational exposure is included through proprietary interface when described in the Statement of Work.

II. Scope of Work

The detailed approach for the implementation is described in the attached Statement of Work which is made part of Philips agreement with Customer via this quotation. The project implementation timeframe will depend upon the number of locations, systems connected, availability of key customer personnel, and if applicable, relevant field service engineers for connecting non-Philips modalities, and IT permissions. A defined timeline will be established as part of the installation planning.

III. Additional Terms

- Philips Remote Services (PRS) Network connectivity to the DoseWise Portal server is required to apply updates to the DoseWise Portal software or to perform technical support troubleshooting.
- Physical or Virtual Machine server hardware and operating system is not included and is provided by Customer. The hardware must meet the hardware recommendations provided by Philips or the warranty for the Licensed Software shall be void during such usage with non-conformance hardware. Philips will recommend a server configuration based on the scope of your project as outlined in the SOW.
- Customer is responsible for maintaining and supporting all modalities connected to DoseWise Portal to ensure continual feed of data to the DoseWise Portal.
- Microsoft SQL Server License per the terms of license from Microsoft to Customer provided to the customer as an attachment (not for high availability use)
- Subject to the below conditions, updates and upgrades are provided, to the extent made commercially available during the applicable subscription license term. Any hardware and operating system software needed to use such items are not included and the responsibility of customer.
  - Software updates are required to be installed. Philips will support only the current version and the previous version of the software.
  - If updates or upgrades require new or upgraded hardware or software, those software or hardware upgrades are not included.
  - Only upgrades to the DoseWise Portal application itself are provided. Philips will install updates via remote access with customer agreement. For purposes of this customer obligation, version shall mean changes to the right of the decimal point.
  - Service and support do not apply if customer maintained hardware fails to conform to Philips specification requirements
- **Additional technical provisions.** Management of the IT environment, including a server and a license to use Microsoft Windows Server 2012 on that server, is the responsibility of the customer. Additionally, Customer is responsible to purchase all client devices

needed to access the server and such devices shall comply with Philips recommendations. This application is not presently built for access via mobile phone or tablet devices. The customer is requested to maintain an agreed set of specifications for the duration of the contract. The customer is responsible for maintaining a secure computing environment, including but not limited to network policy management, user access controls, and installing security patches. Philips recommends that the customer install only critical Microsoft patches. During service, Philips will apply any Microsoft updates within the application that it deems critical to enable the Philips application to load and run. Philips reserves the right to roll back any non-approved update that interferes with the proper functioning of the DoseWise Portal. The customer is recommended to install anti-virus / anti-malware software on the host environment. Philips will not provide such software. The customer is responsible for selecting the appropriate software and maintaining patches, updates, etc. on all third party software used with the DoseWise Portal application, except for the third party software embedded in the Philips DoseWise Portal application itself. Customer is responsible for data backup and shall do so at least once per day. This subscription model does not include data reconstruction.

- **Installation.** Customer and Philips will each provide a project coordinator (as designated in the SOW). Customer is required to have Philips Remote Services (PRS) account for product installation, updates and servicing. All service is based and priced on having the foregoing as a condition of support. Philips shall not be liable for issue resolution or bug fixes to the extent Philips is not given access to the DoseWise software being used by customer via a Philips PRS network connection. Philips and Customer will use all reasonable efforts to complete installation within the defined timeline; however this is an analytics tool and delay in installation does not prevent Customer processing patient workflow. Customer is responsible for securing resources from imaging systems manufacturers for non-Philips modality specific configurations and is responsible for payment to third parties. Configuration of Philips modalities is included within the subscription fee. Philips will provide reasonable information to imaging systems manufacturers to assist in the installation process. In some circumstances it may be determined during the installation process that one or more of the modalities cannot be configured to connect to the DoseWise Portal, either due to technical limitations in the modality (i.e. inability to report dose in any format) or the network or IT infrastructure. Philips and Customer agree to use all commercially reasonable efforts to enable such connectivity, but in the event that this is not possible, Philips will generate an amended quote subtracting out the incompatible systems.

- **Data access.** Philips has the right to aggregate anonymized data for R&D and benchmarking. Such data will exclude any ePHI, hospital or staff identifiers, or information that could be used to re-identify the source of the data.

- **Locations.** "Locations" shall mean physical locations or access to a central server by persons residing in different physical institutional address locations. This is not a concurrent threshold but rather a cumulative number.

- **Third parties.** Under certain circumstances, Philips may need to enter into agreements with third parties, including agents and subcontractors, to satisfy its obligations under this Agreement. Third parties will be bound to the confidentiality and BAA clauses applicable via the quotation sales terms and conditions. Customer will permit such third parties all reasonable access as required by Philips to enable the third party to effectively install, service, or otherwise support the DoseWise Portal.

- **DoseWise Portal Product Warranty.** Philips warrants and represents that during the subscription term, the DoseWise Portal Software License shall materially comply with its production description based on this quotation and the DoseWise Portal instructions for use accessible via in the Licensed Software download (collectively "the DoseWise Portal Product Warranty").

- **DoseWise Portal Product Warranty Exceptions.** Defects arising from the following are not the responsibility of Philips nor covered under the DoseWise Portal Product Warranty: Format or proprietary code issues arising from non-Philips products, configuration of non-Philips products, use of hardware or operating system that does not meet the specification of Philips, viruses unless demonstrated to be introduced by Philips, IT network issues of Customer, failure of the customer to provide PRS remote access to Philips, failure of the customer provisioned computer or operating system, failure of the customer to physically and logically secure the hosting computer or operating system or other acts not caused by Philips product defects or actions.

- **Exclusive Remedies/Material Breach/DoseWise Portal Product Warranty.** In the event of a material breach of this warranty, Philips will have sixty (60) days to repair or replace the DoseWise Portal Licensed Software to make it conform (the "Cure Period"). In the event Philips has not cured a material defect by the expiration period of the Cure Period, Philips shall provide Customer a pro-rata refund for the period of time that the DoseWise Portal Licensed Software was not used as a percentage of the DoseWise Portal Subscription License Term. For the purposes of this paragraph, the DoseWise Portal Subscription License Term is the period of license set forth in the product description for DoseWise Portal. This paragraph sets forth the sole and exclusive remedy of Customer for material breach of the DoseWise Portal Product Warranty.

## Software License

- **License Grant.** Subject to any usage limitations for the DoseWise Portal Subscription License Software (including use solely for the DoseWise Portal License Subscription Term) set forth on the product description section of this quotation, Philips grants to Customer a nonexclusive and non-transferable right and license to use the computer software package ("Licensed Software") in accordance with the terms of the quotation. The License shall continue for the subscription term indicated on the quotation, except that Philips may terminate the License if Customer is in breach or default of the terms of sale applicable to DoseWise Portal subscription license (including payment).

- **License Restrictions.** Customer may not copy, reproduce, sell, assign, transfer, or sublicense the DoseWise Portal Licensed Software for any purpose without the prior written consent of Philips. Customer shall reproduce Philips' copyright notice or other identifying legends on such copies or reproductions. Customer will not (and will not allow any third party to) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover the product or Licensed Software by any means whatsoever. Additionally, in no event shall Customer make derivative works of the DoseWise Portal software or other third party software by embedding Philips DoseWise Portal into the third party application or equipment.

• **Ownership.** The License shall not affect the exclusive ownership by Philips of the DoseWise Portal Licensed Software or of any trademarks, copyrights, patents, trade secrets, or other intellectual property rights of Philips (or any of Philips' suppliers) relating to the DoseWise Portal Licensed Software.

• **Authorized Users.** Customer agrees that only authorized officers, employees, and agents of Customer that perform patient care will use the DoseWise Portal Licensed Software or have access to the DoseWise Portal Licensed Software (or to any part thereof), and that none of Customer's officers, employees, or agents will disclose the DoseWise Portal Licensed Software, or any portion thereof, or permit the DoseWise Portal Licensed Software, or any portion thereof, to be used by any person or entity other than those entities identified on the quotation. Customer acknowledges that certain of Philips' rights may be derived from license agreements with third parties, and Customer agrees to preserve the confidentiality of information provided by Philips under such third party license agreements.

• **Term.** Customer will designate an employee of Customer as the primary user ("Super User") who will administer user privileges and Site level configurations. Contract term will begin upon completion of installation and "Philips notifying the Customer that DoseWise Portal is available for use". Availability for use shall mean that Philips has notified customer that the subscription service is enabled for use by completing the project checklist/statement of work. Once these events have occurred, Customer shall sign the Philips MDIR form.

The contract will automatically renew at the conclusion of the customer chosen subscription period unless renewal is waived by either party. In the event renewal does not occur and Customer provides Philips notice of non-renewal within ninety (90) days prior to the expiration of a then current subscription term, all licenses provided under this Agreement, including licenses to update or upgrades provided under maintenance shall terminate immediately upon the expiration date of the then current subscription period.

• **Termination.** Subscription License Software sales are non-cancellable and Customer may not terminate the same for convenience. At termination, Philips will at its convenience decommission the installation by disabling and/or deleting the software. Where possible, a data dump will be provided as a courtesy to the Customer. Philips may use self-help mechanisms in the Licensed Software; however, such may be used solely to enforce lawful usage of the Licensed Software.

**Except as otherwise provided in the DoseWise Portal product description above within this quotation, Philips Standard Service Terms and Conditions shall apply to your DoseWise Portal license and service subscription purchase. In the event the terms set forth in the product description conflict with those in the Philips Standard Service Terms and Conditions of Sale, the terms of the product description shall control.**

#### **Selected Options:**

##### **Dosewise Locations**

**Qty: 1**

- service coverage for DoseWise location

##### **DoseWise Patient Dose Connections 11-20**

**Qty: 11**

- service coverage for DoseWise Patient Dose Connections

#### **Customer Notes:**

The effective dates of the Dosewise Portal Subscription are estimated. Both parties shall mutually agree on the start date and the subscription will remain in effect for a total of 60 months term.

**Summary of Payment Terms**

Select Payment Term Desired

**In Advance****Net Price**

<input type="checkbox"/>	60 Monthly Payments at	\$2,876
<input type="checkbox"/>	20 Quarterly Payments at	\$8,628
<input type="checkbox"/>	5 Yearly Payments at	\$34,510
<input type="checkbox"/>	Single Payment at	\$172,550

**Defaults to monthly payments if not checked above****Tax May Be Added, If Applicable**

For services performed outside the contract hours of coverage, Philips 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 Philips 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 \_\_\_\_\_

<b>Home</b>	Other	
<b>Office</b>	Sub-Total	
<b>Use</b>	Tax	
<b>Only</b>	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.

# Service Agreement Terms and Conditions

## PHILIPS HEALTHCARE SERVICE AGREEMENT TERMS AND CONDITIONS

### **\*\*DENOTES AMENDED PARAGRAPHS**

#### **1. \*\*SERVICES PROVIDED**

The services listed in the quotation or Statement of Work (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 other than those systems or components listed in the Exhibits and/or Attachment A (the "Covered 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 Covered 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 Covered System by anyone other than Philips' subcontractor or Philips;
  - (v) damage caused by an external source, regardless of nature, unless caused by Philips or Philips subcontractor
  - (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 Covered 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 Covered 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 Covered System.

#### **5. \*\*PAYMENT**

All payments under this Agreement are due thirty (30) days from receipt of a certified invoice by the Monterey County Auditor-Controller. 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, 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 thirty (30) days of invoice. Correspondence relating to disputes should be addressed to:

Attn: Accounts Payable  
Philips Healthcare  
22100 Bothell-Everett Hwy, MS 450  
Bothell, WA 98021

## **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. Philips shall notify Customer as soon as possible following the occurrence of such delay to include the nature and expected duration of the delay event and shall thereafter keep Customer informed until such time that Philips is able to perform its obligations.

## **7. \*\*TERM AND TERMINATION**

7.1 The term of this Agreement shall be set forth in, *inter alia*, the quotation Addendum, plus Exhibits and any/all Attachments attached hereto and incorporated herein.

7.2 Customer may cancel this Agreement upon 60 days written notice to Philips (i) representing that the Covered System is being permanently removed from use and that the Covered 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 their business or a majority of their Covered Systems to a third party and the Covered Systems 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 Covered Systems 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).

7.4 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 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 written 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 TWO TIMES THE AGGREGATE FEES ACTUALLY PAID BY THE PARTICIPANT IN ACCORDANCE WITH THE TERMS AND CONDITIONS FOR THE SIX (6) MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM. THIS LIMITATION SHALL NOT APPLY TO (a) THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT; (b) 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; (c) OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PHI; and, (d) FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS UNAUTHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

11.2 EXCEPT FOR CUSTOMER'S BREACH OF THE LICENSE RESTRICTIONS SET FORTH IN THIS AGREEMENT (INCLUDING REVERSE ENGINEERING, CREATION OF DERIVATIVE WORKS, AND PROHIBITION AGAINST OPEN SOURCE), 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. HOWEVER, AMOUNTS PAID PURSUANT TO PHILIPS' INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR THE BAA SHALL BE DEEMED DIRECT DAMAGES.

## **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**

Intentionally deleted.

## **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.

## **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"). Customer and Philips have entered into a separate HIPAA Business Associate Agreement executed 10/ /2017 and is incorporated herein by reference. 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. This Agreement, including its pricing, is a public record subject to disclosure pursuant to the California Public Records Act. 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.

Philips has made representations as to the existence and validity of "Trade Secrets" pursuant to the CPRA in the non-disclosure of its confidential information. Customer is a public agency subject to the disclosure requirements of the CPRA. If Customer receives a CPRA request for records (as defined by the CPRA) and said request relates to its purported confidential information, Customer will notify Philips of the request and confer with Philips regarding an appropriate response to said request. If Philips contends that the purported confidential information in said documents contains Philips's Trade Secrets, not subject to the CPRA, and/or exempt from the CPRA, and Philips wishes to prevent disclosure of said records, Philips shall instruct Customer to withhold said records. If Philips fails to respond to Customer in writing prior to Customer's deadline for responding to the CPRA request, Customer may disclose the requested information under the CPRA without liability to Philips. Philips shall defend, indemnify and hold Customer harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney fees) that may result from denial of a CPRA request made at Philips's instruction.

#### 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

Philips maintains adequate levels of insurance based on current industry standards for the services provided. A copy of the insurance form can be provided as evidence of Philips' standard insurance coverage. Philips' current insurance limits are as follows:

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS LIMITS IN USD UNLESS OTHERWISE INDICATED	
A	<b>GENERAL LIABILITY</b> COMMERCIAL GENERAL LIABILITY OCCURRENCE	GLD12308-04	31-Dec-2016	31-Dec-2017	GENERAL AGGREGATE	\$6,000,000
					PRODUCTS - COMP/OP AGG	\$6,000,000
					PERSONAL AND ADV INJURY	\$2,000,000
					EACH OCCURRENCE	\$2,000,000
					MED EXP (ANY ONE PERSON)	\$10,000
					DAMAGE to RENTED PREMISES (Ea. Occurrence)	\$500,000
B	<b>AUTOMOBILE LIABILITY</b> ANY AUTO	CAS4047561	31-Dec-2016	31-Dec-2017	COMBINED SINGLE LIMIT (each Accident)	\$2,000,000
					BODILY INJURY (PER PERSON)	
					BODILY INJURY (PER ACCIDENT)	
					PROPERTY DAMAGE	
B B	<b>WORKERS COMPENSATION</b>	LDS4047559 / (AOS)	31-Dec-2016	31-Dec-2017	WORKERS COMP LIMITS	Statutory
					EL EACH ACCIDENT	\$2,000,000

	<b>EMPLOYERS LIABILITY</b>	PS4047560 (WI)	31-Dec-2016	31-Dec-2017	EL DISEASE - POLICY LIMIT	\$2,000,000
					EL DISEASE - EACH EMPLOYEE	\$2,000,000
B	<b>EXCESS WORKERS COMPENSATION</b>	SP4054358 (OH, WA)	31-Dec-2016	31-Dec-2017	SIR \$500,000	\$1,500,000

## 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 constitutes evidence of the existence of this Agreement. The law of the state in which the Covered 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 exhibit shall govern.

Exhibit 1: Additional Imaging System Service Terms and Conditions:

Intentionally omitted -- N/A to this Agreement.

Exhibit 2: Philips Technology Upgrades: Intentionally omitted -- N/A to this Agreement.

Exhibit 3: Additional Support & Assist Coverage Terms and Conditions Intentionally omitted -  
- N/A to this Agreement.

Exhibit 4: Uptime Guarantee: Intentionally omitted -- N/A to this Agreement.

Exhibit 5: Additional Clinical Education Training Terms and Conditions: Intentionally omitted -- N/A to this Agreement.

Exhibit 6: Additional Rightfit Software Maintenance Agreement Terms and  
Conditions

Exhibit 7: Rightfit Software Maintenance Agreement Hardware Support:

Intentionally omitted -- N/A to this Agreement.

Exhibit 8: Additional Patient Care Services Terms and Conditions: Intentionally omitted -- N/A to this Agreement.

Exhibit 9: Product Security Policy Statement

## 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.

## 27. \*\*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), HIPAA notification, and HIPAA penalties, to the extent such damages result from Philips' wrongful or 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, or proven product defect.

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

**For: Philips Healthcare**

Signature

Brittany Hubbard

Printed Name

Service Contracts Manager

Title

Date

10/30/2017

**For: County of Monterey d/b/a Natividad  
Medical Center**

Signature

Printed Name

Title

Date

  
DAY CELLA  
COUNTY COUNCIL  
COUNTY OF MONTEREY

Reviewed as to fiscal provisions

  
Auditor-Controller  
County of Monterey 11/21/17

# Patient Care and Clinical Software Maintenance Agreement

## Exhibit 6

### 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	Software Updates and	Installation Services for Software Updates	Hardware Coverage
Software Maintenance	Included	Included	Included	Not Available
Software Maintenance	Included	Included	Included	See Hardware Support

### 1. Telephone and Remote Support

**A. 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.

**B. \*\*Telephone and Remote Clinical Support coverage** is available Monday through Friday between 8:00 AM and 5:00 PM (PST), excluding Philips observed holidays.

**C. 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.

**D. Remote Access & Diagnostics.** Philips may remotely access the System to perform services. Customer shall provide Philips access to the System.

**E. 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.

**F. 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.

**2. Interface Support.** Philips supports the DICOM and HL7 communication to and from the System as they exist at the System Site at the time of installation. In the case of upgrades, Philips shall provide the following Software maintenance Services:

**A. A.** If the Philips System, interoperability mapping engine, or biomedical device 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.

**B. B.** 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 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 System to support such new interface specifications at a schedule and additional cost to be mutually approved by Philips and the Customer. The 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.

**3. Software Upgrades, Updates and Fixes.** If a software upgrade, update, or fix (i) is available for the

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

**A. 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. 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.

i. **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 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.

ii. **Hardware updates and upgrades.** Software updates and upgrades may require hardware updates or upgrades. Customer is responsible for any such hardware updates or updates. Upgrade installation and clinical support of the installation are subject to the terms of this Agreement.

**B. To receive an upgrade:**

i. 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 System by Philips personnel;

ii. 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

iii. The System that will receive the update or upgrade must meet the specifications of the update or upgrade. Customer shall provide the System hardware and/or software necessary to meet such specifications.

**C.** 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.

**D.** 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.

**4. Installation Services for Software Upgrades, Updates and Fixes.** 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.

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.

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. 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.

**5. Clinical Education.** 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.

**6. Customer Responsibilities**

**A. System administrator.** The 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 System Administrator shall maintain the integrity of the System operation and ensure that backup procedures are in place.

**B. Remote access.** Customer must provide necessary remote access, required information, and support for

the 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.

**C. Security.** Customer is solely responsible for providing adequate security to prevent unauthorized System access to Philips (or its third party vendors) proprietary and confidential information.

**D. Software version levels.** Customer must maintain its Systems at a currently supported version to receive support under this Exhibit.

**E. Hardware revision levels.** Customer must maintain all associated System hardware, firmware, and middleware at the required revision levels for the software version. To receive software updates and upgrades, the Customer must maintain all associated hardware to the then-current specification for the software updates or upgrades.

**F. 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 due to Customer error. For an additional charge based upon published labor and material rates, Philips will offer services on a commercially reasonable efforts basis to reconstruct data.

**G. Intermediate Resolutions.** Customer shall implement any mutually agreed upon system resolutions (e.g. software patches, manual password resets, etc.) or workarounds as requested by Philips while Philips seeks a long term System resolution.

## **7. Service Limitations.**

**A. 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 the customer-created data backup. If the customer-created data backup cannot be used to re-install any data to the System, the 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, the 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.

**B. 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 guides. 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

**C. 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.

**8. Service Exclusions** In addition to the Service Exclusions set forth in the Agreement, the following Service Exclusions apply to Services.

**A.** Any combining of the System with a non-qualified device. A non-qualified device is:

Any product (hardware, firmware, software, or cabling) not supplied by Philips, whether used internal or external to System without Philips' approval. Examples include, software patches, security fixes, and service packs from the operating system, web browser, or database software manufacturer(s);

- i. Any product supplied by Philips that has been modified by the Customer or any third party;
- ii. Any product maintained under this Agreement in which the Customer does not allow Philips to incorporate engineering improvements; or
- iii. 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.

**B.** Operating system software issues that manifest themselves in non-performance of another installed application and affect use or performance of the System.

**C.** 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.

D. Any network related problems.

E. The cost of consumable materials, including batteries, software media, and cassettes.

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# Product Security Policy Statement

Philips Healthcare

This summarizes Philips Healthcare position on securing its medical products and systems in your healthcare enterprise and describes our processes for providing products with *Security Designed In*.

### Background

We at Philips Healthcare recognize that the security of Philips Healthcare products and services is an important part of your organizational security planning. We are dedicated to helping you maintain the confidentiality, integrity, and availability of both electronic personal data (e.g., Protected Health Information – ePHI) and the Philips hardware and software products that create and manage these data.

The threats to the security of devices and healthcare information continue to increase. These threats include malicious security attacks via viruses, worms, and direct hacker intrusion. Governments around the world have enacted legislation to criminalize many of these attacks and to protect individually identifiable health information (e.g., USA-HIPAA, Canada-PIPEDA, general privacy legislation under the European Directive 95/46/EC, Japan-PIPA, and others).

To fulfill its commitment to security, Philips Healthcare maintains a global program to (a) develop and deploy advanced security features for our products and services and (b) manage security events in the field. At the medical device industry level, Philips works on the HIMSS Medical Device Security Workgroup[1] and strives to ensure that new customer security options are included in industry standards such as the Integrated Healthcare Enterprise[2]. We also work to continuously improve our own internal Information Technology Enterprise security, including continuous security improvement in both the product development and service delivery environments.

Philips Healthcare implements security within a heavily regulated medical device industry. Government regulations (e.g., those of the US Food and Drug Administration) require that hardware and software changes be subjected to rigorous verification and validation to assure that high standards of safety and performance are met in all of Philips medical devices[3].



### Philips Healthcare Product Security Activities Organization

Philips Healthcare operates under a global Product Security policy governing design-for-security in product creation, as well as risk assessment and incident response activities for vulnerabilities identified in existing products. The Director of Product Security oversees the implementation of this policy, reporting directly to the Philips Healthcare Chief Technology Officer. Philips Healthcare has instituted a global problem-tracking and escalation system that provides rapid response with full management visibility to security issues.

**PHILIPS**  
sense and simplicity



#### Monitoring and Response to Vulnerabilities

Product engineering groups within Philips Healthcare monitor new security vulnerabilities on an ongoing basis, including those identified by third-party software and operating system vendors and those reported from your healthcare enterprises. A global network of Product Security Officers and their teams collect and manage information and address those vulnerabilities that affect Philips Healthcare products and solutions.

Philips Product Security Incident Response Teams evaluate each real or potential breach with an explicit threat/vulnerability/risk assessment and develop vulnerability response plans as necessary. We want to inform you, our customers, of vulnerabilities that impact your systems, and proceed with mitigation development and deployment while keeping you well informed.

#### Operating System Patch Management

Some Philips Healthcare products use non-Philips commercial software and/or commercial computer Operating Systems (OS) like Microsoft Windows. Philips continuously monitors relevant vendor and industry/media security announcements and performs risk assessments on current medical devices that are most affected by newly discovered vulnerabilities.

Microsoft releases information on MS Windows security patches (hotfixes) on a regular basis. Impact assessments of these hotfixes by Philips product engineering teams typically begin within 48 hours of Philips awareness of a new security vulnerability or patch availability. Following assessment, an indication of Philips response for affected products is available to users typically within 5 to 12 business days for most products.

Depending on the nature of the threat and the affected product in question, a validated "fix" or software update may be released. If the recommended response requires a change to the system software of a medical device, a software update may be released. Information concerning the availability and applicability of such updates is likewise available via Philips standard service channels and, for some products, can be found via the Philips Healthcare website.

In an effort to provide you with this important information in a timely and convenient manner, Philips Product Security

website now features access to dynamic product-specific vulnerability information. This information is formatted into simple, product-specific tables listing known software vulnerabilities and their current status, recommended customer action and general comments. Please visit the Philips Healthcare Product Security website to access this information. If you have any questions regarding the OS vulnerability tables or patch management, contact Philips Healthcare by email [productsecurity@philips.com](mailto:productsecurity@philips.com) or directly contact your Philips Field Service Engineer.



#### Malware Protection

Philips products that support additional malware protection are either delivered with pre-installed anti-virus software or you, the customer, are advised on the installation of permissible, Philips-validated, anti-virus software.

In many of our products, we provide you with a controlled update repository to reduce the risk of equipment outage due to unauthorized or faulty anti-virus signature updates. If available, this service is included in our remote services agreement.

Even when our product is delivered to you with anti-virus software or when you, the customer, install permissible, Philips-validated, anti-virus software, the anti-virus software must be configured according to the Philips-provided guidance. This guidance includes the permissible sources for signature updates in order to maintain safe and effective operation of your equipment. When Philips has validated anti-virus software for your product, it remains your organization's responsibility to regularly check and, if needed, follow the Philips-prescribed update process for the anti-virus software. All changes to your medical device or system should be authorized by Philips documentation or in writing from Philips.

### **Product Assessment/Product Design**

Philips Healthcare proactively conducts internal Product Security assessments to identify potential security weaknesses. Armed with this information, our engineering teams often define configuration changes and re-engineering efforts that will harden the system against outside threats. The same information also drives security design requirements for new products. The Philips Product Security Policy requires *Security Designed In* objectives as part of all new product creation efforts.

### **Philips Product Security Website**

Philips Healthcare provides a variety of customer resources on our Product Security website, including, Security Bulletins, FAQs, vulnerability information, links to industry resources, and other Product Security highlights.



### **MDS<sup>2</sup> Forms**

To assist our USA customers in meeting their HIPAA obligations under the 2005 Security Rule, Philips Healthcare has taken the lead in publishing Product Security information[4]. Philips has taken many steps to enhance the security of our medical devices in response to customer requests. When used properly, the security features of Philips Healthcare products make it easier for users to meet their obligations to ensure the confidentiality, integrity, and availability of patients' health information. In light of the increased focus on medical device security and compliance with the HIPAA Security Rule in the USA, the Healthcare Information and Management Systems Society (HIMSS) created a standard "Manufacturer Disclosure Statement for Medical Device Security" (MDS<sup>2</sup>). The MDS<sup>2</sup> is intended to supply healthcare providers with important information that can assist them in assessing and managing the vulnerabilities and risks associated with electronic Protected Health

Information (ePHI) created, transmitted, or maintained by medical devices.

Philips MDS<sup>2</sup> forms are available to customers via our Product Security website at: [www.philips.com/productsecurity](http://www.philips.com/productsecurity).

### **Customer Role in Product Security Partnership**

We recognize that the security of Philips Healthcare products is an important part of your facility's security-in-depth strategy. However, protection can only be realized if you implement a comprehensive, multi-layered strategy (including policies, processes, and technologies) to protect information and systems from external and internal threats. Following industry-standard practice, your strategy should address physical security, operational security, procedural security, risk management, security policies, and contingency planning. The practical implementation of technical security elements varies by site and may employ a number of technologies, including firewalls, virus-scanning software, authentication technologies, etc. As with any computer-based system, protection must be provided such that firewalls and/or other security devices are in place between the medical system and any externally accessible systems. The USA Veterans Administration has developed a widely used Medical Device Isolation Architecture for this purpose[5]. Such perimeter and network defenses are essential elements in a comprehensive medical device security strategy. Any connection of a device to a hospital network should be done with appropriate risk management for safety, effectiveness, and data and systems security. For guidance on risk management, see the IEC-80001-1 standard[6].

### **Policies on Third-Party Software and Patching**

Philips Healthcare sells highly complex medical devices and systems. Only Philips-authorized changes are to be made to these systems, either by Philips personnel or under Philips explicit published direction. With the current rise in security threats, Philips product engineering groups are working to qualify security-related third-party software on selected equipment. However, we continue to treat patient and operator safety as our primary concern, and we are required to follow government-regulated quality assurance procedures to verify and validate modifications to the operation of our medical devices. As with other medical devices, any "software only" Philips products should be used only on properly secured computers and networks. We

strongly suggest that your security staff monitor system and application vulnerabilities and keep the operating system and other installed software running on your system up-to-date.

Philips Healthcare sells a broad range of devices, from image acquisition and viewing systems and IT-oriented PACS to 24/7 life-critical, real-time patient monitors. The diverse nature of our products has led us to support different means of installation and maintenance for third-party software on our systems. Please contact Philips Customer Services for more specific information on your particular product.

#### **General Case**

Most of Philips Healthcare equipment does not permit third-party software installation of any kind by the customer (e.g., anti-virus scanners, office productivity tools, system patches, on-platform firewalls, etc.) without prior written consent. Unauthorized modifications to Philips Healthcare products could void your warranty and alter the regulatory status of the device. Any resulting service required is not covered under our service agreements. Such modifications can affect the performance or safety of your device in unpredictable ways, and Philips is not responsible for equipment that has been modified.

When Philips authorizes the use of anti-virus scanners, system patches, or upgrades, the scanner/patch/upgrade installation is typically carried out by (1) Philips Healthcare at the time of manufacture or installation or, (2) post-installation by a Philips-qualified Service Engineer.

#### **Exceptions**

In very few of our systems, Philips does permit the installation or enabling of third-party software directly by your designated Philips system administrator, but always under explicit published guidance of Philips Healthcare and only to be applied to the particular system and version covered by the Philips written documentation.

Prior to installing or enabling any third-party software on a Philips Healthcare product, you should contact your local Philips service representative to determine if your particular product has been qualified for that specific software and, if so, what restrictions may apply. The qualification and use of these software products vary by Philips product.

It is important to understand that any unauthorized modification of a Philips medical device or system (e.g., in-product firewall change or installation of patches, virus-detection software, utilities, games, music files, updates, etc.) can adversely affect system performance or safety in unpredictable ways, thereby depriving your staff and their patients of protections afforded by government regulatory requirements for medical devices as well as Philips extensive quality system for the development, manufacturing, and testing of its devices. Possible detrimental side effects of these installations or modifications might include:

1. the opening or widening of pathways which could allow a compromise of access or control
2. the invisible introduction of viruses, spyware, trojans, backdoor access, or other remote agents
3. the installation of an unauthorized update that converts a stable system component into one with a vulnerability

Should you suspect or know of any unauthorized modifications to your Philips medical device or system, you should immediately report it to your Philips Field Service Engineer who will assist you in determining the appropriate corrective action to bring your device or system back into specification.



#### **Philips Remote Service**

Philips Healthcare has created a global, web-based Philips Remote Services network (PRS) for connecting many of your Philips systems to our advanced service resources. This state-of-the-art design provides your equipment with a single point-of-network access to on-site Philips equipment using Virtual Private Network technologies. This secure tunnel approach was developed to provide a best-in-class remote service solution that secures the connection through explicit authorization and authentication control

with encryption of all of the information in the service session.

### Philips Healthcare in a Changing World

In line with the need to increase security of our medical products, Philips Healthcare continues to examine and re-engineer existing products to best accommodate the requirements of our security-minded customers. We are deeply engaged in creating the products of tomorrow based on fundamental security principles. We will continue to work closely with both your care providers and your IT organizations to provide flexible solutions to today's problems even as we create new *Security Designed In* medical products. Questions about our efforts to improve the security of our products can be directed to your field service or sales representative or [productsecurity@philips.com](mailto:productsecurity@philips.com). If your concern extends beyond product and service security to how Philips Healthcare manages personal data (i.e., privacy), you can email your questions to [healthcare.privacy@philips.com](mailto:healthcare.privacy@philips.com).

Thank you for your continued interest in the many healthcare solutions provided by Philips Healthcare.



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<sup>1</sup> Healthcare Information and Management Systems Society (HIMSS) Medical Device Security Workgroup <http://www.himss.org/> see Topics and Tools >> Medical Device Security.

<sup>2</sup> IHE is a joint initiative of the Healthcare Information and Management Systems Society (HIMSS) and the Radiological Society of North America (RSNA) <http://www.ihe.net/>.

<sup>3</sup> For more information, see the U.S. Food and Drug Administration Information for Healthcare Organizations about FDA's Guidance for Industry: Cybersecurity for Networked Medical Devices Containing Off-the-Shelf (OTS) Software at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm077812.htm>

<sup>4</sup> To obtain copies of the Manufacturer Disclosure Statement for Medical Device Security (in the HIMSS MDS2 standard form) for Philips' products, visit <http://www.healthcare.philips.com/main/support/productsecurity/mds2.wpd>

<sup>5</sup> See USA Department of Veterans Affairs Medical Device Isolation Architecture Guide, v2.0, available at the HIMSS website [http://www.himss.org/ASPI/topics\\_FocusDynamic.asp?faid=101](http://www.himss.org/ASPI/topics_FocusDynamic.asp?faid=101)

<sup>6</sup> Application of Risk Management to IT-networks Incorporating Medical Devices, <http://www.iso.org>



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## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective October 30, 2017 (“Effective Date”), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity” or “NMC”) and Philips Healthcare, a division of Philips Electronics North America Corporation and its Affiliates (“Business Associate”) (each a “Party” and collectively the “Parties”).

### RECITALS

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information (“PHI”) that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the “Privacy Rule”), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the “Breach Notification Rule”), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the “Security Rule”), (collectively “HIPAA”), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”) shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

1.1 All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

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and revised on 12/09/16*

(a) "Breach" shall have the same meaning as "breach" as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term "Breach" as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient's "medical information" as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a "breach of the security of the system" under Cal. Civil Code §1798.29.

(b) "California Confidentiality Laws" shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity's behalf. **PHI includes EPHI.**

(d) "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

## **2. PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

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(d) Use PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45 C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached;

(f) Use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to a Services Agreement between the Parties, or with the prior written approval of Covered Entity.

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**3.1. Responsibilities of Business Associate.** With regard to its Use and/or Disclosure of PHI, Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within five (5) business days of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

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(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) In consultation with the Covered Entity, Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, attorney fees, and costs of mitigating the harm (which may include the costs of obtaining up to one year of credit monitoring services) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services ("Secretary") in a time and manner designated by the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule. In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI for purposes of determining whether Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable request by Covered Entity;

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(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed; and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

(h) Disclose to its Subcontractors or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) If all or any portion of the PHI is maintained in a Designated Record Set:

(i) Upon ten (10) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; and

(ii) Upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(j) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(k) Unless prohibited by law, notify the Covered Entity within five (5) business days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge, provided that all costs and expenses associated with such a challenge shall be borne by the Covered Entity; and

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(l) Maintain policies and procedures materially in accordance with State Confidentiality Laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

### **3.2 Business Associate Acknowledgment.**

(a) Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA and the HITECH Act. Business Associate shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy>. Business Associate agrees to periodically review the NMC Notice of Privacy Practices at this URL while doing business with NMC to ensure it remains updated on any changes to the Notice of Privacy Practices NMC may make.

**3.3 Responsibilities of Covered Entity.** Covered Entity shall, with respect to Business Associate:

(a) Provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) Notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI;

(c) Notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the Use or Disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; and

(d) Notify Business Associate of any restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

## **4. TERM AND TERMINATION**

**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and

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requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) terminate this BAA within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured; or (ii) if Business Associate does not cure the breach or end the violation, Covered Entity may terminate the Agreement. If a cure is not reasonably possible, Covered Entity may immediately terminate this Agreement.

**4.3 Automatic Termination.** This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services related to services associated with the related to the DoseWise Portal Solution (Philips Service Agreement No. 1-1GMPHP5) to Covered Entity.

**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (vi) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **5. MISCELLANEOUS**

**5.1 Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 3.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

**5.2 Amendments; Waiver.** This BAA may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA, the HITECH Act, or California Confidentiality

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Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**5.3 No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**5.4 Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Philips Healthcare  
22100 Bothell-Everett Highway, MS 665  
Bothell, WA 98021  
Attn: HIPAA Coordinator  
With a copy to:

Philips Healthcare  
22100 Bothell-Everett Highway, MS 522  
Bothell, WA 98021  
Attn: Legal Department

If to Covered Entity, to:

Natividad Medical Center  
Attn: Compliance/Privacy Officer  
1441 Constitution Blvd.  
Salinas, CA 93906  
Phone: 831-755-4111  
Fax: 831-755-6254

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

**5.5 Counterparts; Facsimiles.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

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**5.6 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

**5.8 Indemnification.** Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all (a) costs and expenses, including attorney's fees, to fulfill any notification obligations imposed on Covered Entity arising from Business Associate's unauthorized access, use or disclosure of PHI, (b) penalties imposed by a federal or state agency against Covered Entity to the extent such penalty is imposed upon Covered Entity for Business Associate's acts or omissions under HIPAA privacy and security rules or HITECH, and (c) subject to a \$2,000,000 per occurrence and \$4,000,000 aggregate limitation, any third party claims, demands, awards, judgments, actions and proceedings to the extent arising out of, or in connection with, a material violation of this BAA or a Breach that is directly attributable to an act or omission of Business Associate and/or its agents members, employees, or Subcontractors. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.

**5.9 Applicability of Terms.** This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.10 Insurance.** Business Associate maintains adequate levels of insurance based on current industry standards for the services provided. Business Associate's insurance coverage shall include coverage for any and all claims, liabilities, demands, damages, losses, costs and expenses arising from ~~a breach of the obligations~~ the negligent acts, errors and omissions of Business Associate, its officers, employees, agents and Subcontractors under this BAA. A copy of the certificate of insurance form shall be provided as evidence of Business Associate's standard insurance coverage. Business Associate's current insurance limits are shown below and Business Associate agrees that it shall continually maintain insurance coverage as evidenced:

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CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS LIMITS IN USD UNLESS OTHERWISE INDICATED	
A	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY OCCURRENCE	GLD12308-04	31-Dec-2016	31-Dec-2017	GENERAL AGGREGATE	\$6,000,000
					PRODUCTS - COMP/OP AGG	\$6,000,000
					PERSONAL AND ADV INJURY	\$2,000,000
					EACH OCCURRENCE	\$2,000,000
					MED EXP (ANY ONE PERSON)	\$10,000
					DAMAGE to RENTED PREMISES (Ea. Occurrence)	\$500,000
B	AUTOMOBILE LIABILITY ANY AUTO	CAS4047561	31-Dec-2016	31-Dec-2017	COMBINED SINGLE LIMIT (each Accident)	\$2,000,000
					BODILY INJURY (PER PERSON)	
					BODILY INJURY (PER ACCIDENT)	
					PROPERTY DAMAGE	
B B	WORKERS COMPENSATION / EMPLOYERS LIABILITY	LDS4047559 (AOS)	31-Dec-2016	31-Dec-2017	WORKERS COMP LIMITS	Statutory
		PS4047560 (WI)	31-Dec-2016	31-Dec-2017	EL EACH ACCIDENT	\$2,000,000
					EL DISEASE - POLICY LIMIT	\$2,000,000
					EL DISEASE - EACH EMPLOYEE	\$2,000,000
B	EXCESS WORKERS COMPENSATION	SP4056203 (OH, WA)	31-Dec-2016	31-Dec-2017	SIR \$500,000	\$1,500,000

**5.11 Legal Actions.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.


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**5.12 Audit or Investigations.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any audit, compliant review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf as of the Effective Date.

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By: <u></u>	By: _____
Print Name: <u>Brittany Hubbard</u>	Print Name: _____
Print Title: <u>Service Contracts Manager</u>	Print Title: _____
Date: <u>10/30/2017</u>	Date: _____

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