

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

112



**FROM:** Riverside County Regional Medical Center

**SUBMITTAL DATE:**  
December 6, 2010

**SUBJECT:** Approval of Philips Medical Systems as the Sole Source Vendor to provide service for the Philips Brilliance 64 Slice CT Scanner.

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and authorize the Sole Source procurement for Multiple Year Service Agreement for the Philips Brilliance 64 Slice CT Scanner without securing competitive bids, in accordance with Ordinance 459.4.
2. Authorize the Purchasing Agent to renew the Service Agreement for up to four (4) one-year periods, at the annual rate of \$169,613.00 provided funds are available.

**BACKGROUND:**

The procurement of the Philips Brilliance 64 Slice CT Scanner was approved on September 12, 2006, Agenda Item 3.53, and the Philips Brilliance 64 Slice CT Scanner was installed in 2008. The standard system warranty was applied after the installation.

(Continued on Page 2)

*Douglas D. Bagley*  
\_\_\_\_\_  
Douglas D. Bagley, Hospital Director

<b>FINANCIAL DATA</b>	<b>Current F.Y. Total Cost:</b>	\$ 169,613	<b>In Current Year Budget:</b>	Yes
	<b>Current F.Y. Net County Cost:</b>	\$ 0	<b>Budget Adjustment:</b>	No
	<b>Annual Net County Cost FY:</b>	\$ 0	<b>For Fiscal Year:</b>	10/11

<b>SOURCE OF FUNDS:</b>	Enterprise Funds	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
		<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

**County Executive Office Signature**

BY: *Debra Cournoyer*  
Debra Cournoyer

FORM APPROVED BY COUNTY COUNSEL  
DATE: 12/06/10  
BY: NEAL R. KIPNIS

Purchasing: *Mark Sailer*  
Assistant Director  
Departmental Concurrence

Consent  
 Policy  
 Consent  
 Policy  
 Dept't Recomm.:  
 Per Exec. Ofc.:

Prev. Agn. Ref.: \_\_\_\_\_ District: 5 Agenda Number: \_\_\_\_\_

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3.65

**SUBJECT: Approval of Philips Medical Systems as the Sole Source Vendor to Provide Service for the Philips Brilliance 64 Slice CT Scanner**

**Page 2**

**BACKGROUND:** (cont.)

This service agreement commences at the time of warranty expiration.

**PRICE REASONABLENESS:**

Philips Medical Systems is providing prices in accordance with GPO MEDASSETS contract number CE00177. The County is receiving discounts equal to comparable customers. This discount represents a 20% savings.

DB:rs



## Memorandum

December 6, 2010

**To:** Riverside County Board of Supervisors

**From:** Douglas D. Bagley, Chief Executive Officer  
Riverside County Regional Medical Center

**Via:** Riverside County Purchasing Agent

**Subject:** **Sole Source Procurement: Request for Multiple Year Service Agreement for Philips Brilliance 64 Slice CT Scanner**

The below information is provided in support of my Department requesting approval for a sole source. Please note that outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

**Supply/Service being requested:** Multiple Year Service Agreement for Philips Brilliance 64 Slice CT Scanner.

**Supplier being requested:** Philips Medical Systems

**Alternative suppliers that can or might be able to provide supply/service:** None. Service is proprietary.

**Extent of market search conducted:** Utilized internet and industry related publications.

**Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Philips Medical Systems is the only authorized vendor to provide service for the Philips Brilliance 64 Slice CT Scanner.

**Reasons why my department requires these unique features and what benefit will accrue to the county:** The Philips Brilliance 64 Slice CT Scanner is essential for maintaining Trauma Status and offer State of the art quality for patients and teaching purposes.

**Price Reasonableness:** Philips Medical Systems is providing prices in accordance with GPO MEDASSETS contract number CE00177. The County is receiving discounts equal to comparable customers. This discount represents a 20% savings.

Does moving forward on this product or service further obligate the county to future similar contractual arrangements? No

  
\_\_\_\_\_  
Department Head Signature

  
\_\_\_\_\_  
Date


Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

  
\_\_\_\_\_  
Purchasing Agent

  
\_\_\_\_\_  
Date

PHILIPS MEDICAL SYSTEMS N.A.  
 22100 Bothell Everett Highway  
 P.O. Box 3003  
 Bothell, Washington 98041-3003  
 Tel: (800) 722-7900



<b>Quotation #:</b> 1-I9E8WP	<b>Rev.</b> 4	<b>Effective From:</b> 05/29/2008	<b>To:</b> 06/28/2008
<b>Presented To:</b> RIVERSIDE COUNTY REGIONAL MED CTR 26520 CACTUS AVE MORENO VALLEY, CA 92555		<b>Presented By:</b> Debbie Dawson <i>Account Manager</i>  Dan Nacey <i>Regional Manager</i>	
Tel:		<b>Tel:</b> (760) 804-1394 <b>Fax:</b>	
<b>Alternate Address:</b>		<b>Tel:</b> <b>Fax:</b> (949) 743-0769	
<b>Date Printed:</b> 07-Dec-10			
<b>Submit Orders To:</b> 22100 Bothell Everett Hwy Bothell, WA 98021-8431 Tel: (800) 982-2011 Fax: (425) 487-8110			

**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).

Model	Months	Qty	Service Plan
100016 Brilliance CT 64 Channel Systems	48	1	SVC0101 Gold

Home Office Use Only		
Site #	Start Date	End Date

## POINT OF SALE SERVICE CONTRACT SECTION

This quotation contains confidential and proprietary information of Philips Medical Systems and is intended for 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 Medical Systems.

**Philips Ultrasound Customer Services Ranked #1 by Customers in IMV ServiceTrak™ Survey in 2009 for 17th consecutive year.**

**Brilliance CT 64 Channel Systems**

<b>Additional Equipment Covered</b>	<b>Part #</b>
<b>BR64 with Essence Tech</b>	<b>NNAC006</b>
<b>Extended Brilliance Workspace</b>	<b>NCTA440</b>

Comprehensive parts and labor support for Workstation Hardware and Software.

<b>Item #</b>	<b>Part #</b>	<b>Description</b>
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<b>1</b>	<b>SVC0101</b>	<p><b>Gold</b></p> <p>Philips Medical Systems Gold Customer Service Agreement:</p> <ul style="list-style-type: none"> <li>- Labor and travel coverage from 8:00 am - 5:00 pm, Monday - Friday, excluding holidays</li> <li>- Priority Service Response</li> <li>- Planned Maintenance</li> <li>- Preferred rates for labor and travel outside coverage hours</li> <li>- Parts coverage, excluding consumable items and other items listed in the Terms and Conditions provided with this agreement</li> <li>- Priority Parts Delivery</li> <li>- Remote Service</li> <li>- 98% Uptime Guarantee, per the terms and conditions of the Uptime Guarantee Exhibit</li> <li>- Clinical Telephone Support</li> <li>- 25% Discount on future upgrade purchases</li> <li>- Operating System Software Updates</li> <li>- Hardware Reliability Updates</li> <li>- 30 Continuing Education Units (CEUs) from Philips On-line University per year</li> <li>- Service Management Reports</li> <li>- Philips Utilization Services – Utilization Essentials</li> </ul>
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Part of the Philips Utilization Services suite of products, Utilization Essentials provides detailed system usage information designed to improve clinical workflow efficiency, increase revenue, and enhance patient experience. This information is securely displayed within the NetForum user community, where the customer will find their utilization data graphically summarized in a format that is actionable, allowing the customer to make data-driven decisions quickly and efficiently.

Utilization Essentials includes the following reports:

- Patient Scheduling
- Average Examination Time
- Procedure Mix
- Number of Examinations
- Examination Mix

\*\*\* **NOTE:** Customer must meet the following requirements to be eligible for Utilization Services  
\*\*\*

- Must have a Brilliance System with software release 2.2.1 or higher
- System must be connected and reachable via Philips Remote Services (PRS)

<b>1.1</b>	<b>SVC00004</b>	<p><b>Extended Coverage Hours - 24X7</b></p> <p>Extended labor and travel coverage seven (7) days per week twenty-four (24) hours per day including Philips holidays.</p>
<b>1.2</b>	<b>SVC00019</b>	<p><b>Tube Coverage Unlimited Exposures</b></p> <p>Multi-Slice CT Tube replacement as needed during the contract term. Tube replacements will be performed during normal working hours (M-F, 8:00 am – 5:00 pm).</p>

**Brilliance CT P4 Channel Systems**

Service Plan: SVC0101 Gold  
 Quantity: 1

**\*To commence at a time of system warranty expiration with the exception of In-Warranty Coverage and selected Supplement Items Plans\***

**Select Payment Terms Desired:**

Select Choice *	Payments Plans	Single System Net	Total Net
<input checked="" type="checkbox"/>	48 Monthly Payments at	\$14,134	\$14,134
<input type="checkbox"/>	16 Quarterly Payments at	\$42,403	\$42,403
<input type="checkbox"/>	4 Annual Payments at	\$169,613	\$169,613
<input type="checkbox"/>	Single Payment at	\$678,450	\$678,450

\* If no selection is made, the default choice will be monthly payments.

*Prices above do not include any applicable sales taxes*

The service agreement payment does not include optional equipment. If optional equipment is purchased please see attached Equipment Configuration Option Pricing (if available) or contact your Account Manager for amended service pricing.

Buying Group: MEDASSETS SUPPLY CHAIN SYSTEMS INC      Contract #: CE00177

**Add'l Terms:**

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

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Our facility does not issue formal purchase orders. We authorize payments 'in lieu of a Purchase Order' for the equipment as described in Philips Medical Systems ('Philips') 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, this document constitutes a contract and customer agrees to be bound by all terms hereof which include IMPORTANT LIMITATIONS OF LIABILITY.

BY: X \_\_\_\_\_  
 Customer Signature

\_\_\_\_\_  
 Printed Name

Title \_\_\_\_\_      Date \_\_\_\_\_

**For Headquarters Use Only**

Philips by its acceptance thereof, agrees to provide maintenance service for the equipment listed above in accordance with all terms.

\_\_\_\_\_  
 Signature

Title \_\_\_\_\_      Date \_\_\_\_\_

FORM APPROVED COUNTY COUNSEL

BY: NEAL R. KIPNIS      DATE: 12/16/10

## Service Agreement Terms and Conditions

### PHILIPS MEDICAL SYSTEMS

Philips Medical Systems North America Company, a Division of Philips Electronics North America Corporation ("Philips") will perform the services ("Services") listed below and on the above pages of this service agreement and any exhibits ("Exhibits") attached to it (together, the "Agreement") under the following terms and conditions:

#### 1. SERVICE

Unless otherwise set forth in the Exhibits, Philips will provide Customer the Services on the equipment identified ("Equipment"), at the location described ("Equipment Site"), and for the prices set forth in this Agreement, including:

- a. Equipment quality performance assurance service as scheduled by Philips to include a general system inspection and review of system operation, calibrating the system as necessary, system lubrication and filter replacement or cleaning, completing minor operational and reliability field engineering change notices or updates and other remedial maintenance of a non-emergency nature. Philips will provide such planned maintenance during the Service Coverage hours (as defined in paragraph 3 below) at a time that is mutually agreed upon; and
- b. Repair service, due to Equipment malfunction, as required. Repair service includes the cost of Philips replacement parts as required on an exchange (refurbished) or new part basis and labor to install Philips replacement parts. Replaced parts become Philips' property and may be promptly removed by Philips from the Equipment Site. The prices set forth in this Agreement are subject to change if (i) the Equipment is upgraded or reconfigured, or (ii) cryogenics are included in this Agreement and Philips cost of cryogenics is increased by fifty percent or more during the term of this Agreement.

#### 2. EXCLUSIONS

The Services do not include:

- a. servicing or replacing components of the Equipment other than those listed in the Exhibits;
- b. providing any service or parts specifically excluded under this Agreement;
- c. providing or paying the cost of any rigging, facility, structural alteration, or accessory incident to the Services or Equipment;
- d. servicing the Equipment if the Equipment Site or Equipment is contaminated with blood or other potentially infectious substances;
- e. any service necessary due to:
  - (1) a design, specification or instruction provided by Customer or Customer representative;
  - (2) the failure of anyone other than Philips' subcontractor or Philips to comply with Philips' written instructions or recommendations;
  - (3) any combining of the Equipment with a product or software of other manufacturers other than those recommended by Philips;
  - (4) any alteration or improper storage, handling, use or maintenance of the Equipment by anyone other than Philips' subcontractor or Philips;
  - (5) damage caused by an external source, regardless of nature;
  - (6) any removal or relocation of the Equipment; or
  - (7) neglect or misuse of the Equipment;
- f. any cost of materials, supplies, parts or labor supplied by any party other than Philips or Philips' subcontractors;
- g. unless specifically included in this Agreement, the cost of consumable materials, including but not limited to cushions, knee supports, pads, magnetic media, cryogenics, PET calibration sources, film, batteries or other supply items;
- h. the cost of factory reconditioning;
- i. providing software updates, back-up copies of software, or the programming of custom code;
- j. unless specifically included in this Agreement, maintenance or repair, including the cost thereof, of third-party products including but not limited to HVAC systems and chiller systems; or
- k. unless specifically included in this Agreement, the cost of nuclear camera detector crystals, surface coils, flat panel detectors, magnet replacement, magnet refrigeration system (coldhead, compressor), chiller, power conditioners, power filters, surge suppressors, uninterruptible power supplies and evacuated devices such as x-ray tubes, image intensifier tubes, TV camera pick-up tubes, photo multiplier tubes, and monitors.

#### 3. COVERAGE

Unless otherwise set forth in the Exhibits, Philips will provide Customer the Services Mondays through Fridays, 8:00 AM to 5:00 PM Customer local time, excluding Philips observed holidays ("Service Coverage"). Unless otherwise set forth in the Exhibits, travel necessary to perform the Services during the Service Coverage hours is included. Subject to the availability of personnel and repair parts, Philips will provide, at Customer request and additional expense, service relating to certain excluded items (invoiced at Philips' then-current standard rates for material and labor) or service outside the Service Coverage hours (invoiced at Philips applicable rates for out-of-hours service of this type in effect for service contract customers with this Equipment, including round trip travel time). Customer will be charged a minimum of two hours on-site time plus applicable travel charges per service visit. Other travel expenses and overnight living expenses will be charged at actual cost in accordance with Philips standards for business expense reimbursement of Philips' employees.

Philips Technology Updates option ("PTU option") is a purchasable option available only for certain Equipment identified by Philips. PTU option coverage may be purchased as software only, hardware only or a combination of software and hardware. If the PTU option is available for the Equipment and purchased under this Agreement, then Philips will update the Equipment software and hardware as follows:

- a. For Equipment software updates, Philips will provide the latest available updates, if any and when available and approved by Philips, to the Equipment operating system software, basic application software and software options purchased with the Equipment or purchased separately from Philips for the Equipment. This paragraph 3(a) does not apply if the PTU option is for hardware only.
- b. For Equipment hardware updates, Philips will provide the latest available update, if any, to the Equipment hardware component(s) expressly described on the above pages of this Agreement under the PTU option. Philips will provide such hardware update at the time and quantity as expressly described on the above pages of this Agreement under the PTU option. In no case will Philips obligation under any Equipment hardware update provided under this Agreement exceed the greater of \$5,000 or the amount expressly described on the above pages of this Agreement under the PTU option. This paragraph 3(b) does not apply if the PTU option is for software only.
- c. Customer acknowledges and agrees that such updates to the Equipment software and hardware are premised on Customer's agreement that all updates furnished pursuant to this Agreement are only available for the Equipment at the Equipment Site. Such updates do not include functionality, applications, options or the like that were not purchased with the Equipment, including but not limited to virus protection software. Customer may not resell, transfer or assign the right to such updates to any third party. All updates to the Equipment software and hardware provided under this Agreement are subject to the terms and conditions of this Agreement and any licensing terms and conditions included in the purchase of the Equipment from Philips.
- d. If this Agreement is terminated due to the fault of Customer or Customer defaults under this Agreement after any updates to the Equipment software or hardware are provided by Philips, then Customer will pay Philips the list price of the provided updates within thirty days of such termination or default.

#### 4. CUSTOMER RESPONSIBILITIES

During the term of this Agreement, Customer shall:

- a. assure that the Equipment Site is maintained in a clean and sanitary condition and that the Equipment is cleaned and decontaminated after contact with blood or other potentially infectious material;
- b. dispose of any hazardous or biological waste generated as a result of Philips servicing the Equipment;
- c. maintain the Equipment Site and environment (including temperature and humidity control, incoming power quality, incoming water quality, and fire protection system) in a condition suitable for operation of the Equipment;
- d. operate the Equipment in accordance with the published manufacturer's operating instructions;
- e. make normal operator adjustments to the Equipment as specified in the published manufacturer's operating instructions;
- f. provide Philips a secure location to store a Philips remote services ("PRS") router (or a Customer owned router acceptable to Philips) for connection to the Equipment and Customer network;
  - provide Philips appropriate access to the PRS router to enable Philips to access the Equipment remotely;
  - provide Philips with a dedicated broadband Internet access node, including but not limited to public and private interface access, suitable to establish a successful connection to the Equipment through the Philips PRS and Customer's network for Philips use in remote servicing of the Equipment, remote assistance to personnel that operate the Equipment, updating the Equipment software, transmitting automated status notification from the Equipment and regular uploading of Equipment data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into new services). Unless Philips determines in its sole discretion that the Equipment cannot be connected to the PRS, then Customer's failure to provide the access described in this paragraph 4(f) will constitute Customer's waiver of its rights to Services under this Agreement and any uptime guarantee provided with the Equipment or in connection with this Agreement, if any; and
  - provide Philips service personnel full and free access to the Equipment at the scheduled service time. Customer's failure to provide such access at the scheduled time constitutes Customer's waiver of the scheduled planned maintenance service and voids Agreement coverage of Equipment malfunctions until such time as planned maintenance service is completed. Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the Equipment.

#### 5. PAYMENT

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

#### 6. EXCUSABLE DELAYS

Philips is excused from performing under this Agreement when Philips' delay or failure to perform is caused by events beyond Philips reasonable control including, but not limited to, acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, terrorism, embargoes, labor disputes, acts of sabotage, riots, accidents,



delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities, or Equipment being contaminated with blood or other potentially infectious material.

#### 7. TERM; TERMINATION

Except as otherwise provided in this paragraph 7, this Agreement is noncancelable by Customer and will remain in effect for the term specified in this Agreement. Customer may cancel this Agreement upon 60 days written notice to Philips (i) representing that the Equipment is being permanently removed from the Equipment Site and that the Equipment is not being used in any other Customer or third party site, provided that if Customer transfers ownership of the Equipment as part of the transfer of Customer's business or a substantial amount of its assets to a third party without assignment of this Agreement to such third party (as described in paragraph 16), then Customer will pay a cancellation fee equal to thirty percent of the remaining balance of this Agreement; 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. 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 become due to be immediately due and payable under this Agreement and any or all of the other agreements, (iii) commence collection activities for all sums due and 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. If Philips determines that its ability to provide the Service Coverage is hindered due to the unavailability of parts or trained personnel, then Philips may terminate this Agreement upon notice to the Customer and provide Customer with a refund of any Customer pre-payments for periods of Service Coverage terminated by Philips.

#### 8. WARRANTY DISCLAIMER

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

#### 9. LIMITATIONS OF REMEDIES AND DAMAGES

Philips' total liability, if any, and Customer's exclusive remedy with respect to the Services and Philips' performance hereunder is limited to an amount not to exceed the price stated herein for service that is the basis for the claim. IN NO EVENT WILL PHILIPS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR THE COST OF SUBSTITUTE PARTS OR SERVICES, WHETHER ARISING FROM BREACH OF THE TERMS IN THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT. PHILIPS WILL HAVE NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS AGREEMENT.

#### 10. PROPRIETARY SERVICE MATERIALS

In connection with the installation, configuration, maintenance, repair and de-installation of the Equipment, Philips might deliver or transmit to the Equipment Site, along with the Equipment or separately, and store at the Equipment Site, attach to or install on the Equipment, and use certain proprietary service materials (including software and written documentation) that have not been purchased by or licensed to Customer. Customer hereby consents to this delivery, transmission, storage, attachment, installation and use, and to the presence of Philips' locked cabinet or box in the Equipment Site for storage of this property, and to Philips' removal of all or any part of this property at any time, all without charge to Philips. The presence of this property within the Equipment 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. Any access to or use of this property and any decompilation of this property by anyone other than Philips' personnel is prohibited. Customer agrees that it will use all reasonable efforts to protect this property against damage or loss and to prevent any access to or use or decompilation of this property contrary to this prohibition. Customer also agrees to immediately report to Philips any violation of this provision known by Customer.

#### 11. THIRD PARTY MANAGEMENT

If Customer has contracted with a third party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization or the like ("Third Party Organization") for purposes of centralized billing and management of services provided to Customer, at Customer's written request, Philips will route invoices for payment of services rendered by Philips to such Third Party Organization and accept payment from them on Customer's behalf. Notwithstanding the above, Customer agrees that the services provided by Philips are subject solely to the terms and conditions set forth in this Agreement, and that Customer guarantees the payment of all monies due or that may become due under this Agreement in spite of any collateral arrangements Customer may have with such Third Party Organization or any payments Customer have made to the Third Party Organization. Philips has no contractual relationship for the Services rendered to Customer except as set forth herein. To the extent that the parts and services Philips provides are not covered by Customer's arrangement with such Third Party Organization, Customer agrees to promptly pay for such parts and services on demand.

#### 12. TAXES

Customer will not be obligated to pay any federal, state or local tax imposed upon or measured by Philips' net income. Any other 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.

#### 13. INDEPENDENT CONTRACTOR

Philips is Customer's independent contractor. Philips' employees are under Philips' exclusive direction and control. Philips' subcontractor's employees are under Philips' subcontractor's exclusive direction and control. Nothing in this Agreement will be construed to designate Philips or any of Philips' employees or Philips' subcontractors or any of their employees as Customer employees, agents, joint venturers or partners. Customer will indemnify, defend, and hold harmless Philips and its officers, directors, and employees from any claims for loss, cost, damages, expense or liability (including reasonable attorneys fees) to the extent such claims result from Customer's or Customer's employees' act or omissions related to the services to be performed by Customer's employees under this Agreement.

#### 14. RECORD RETENTION AND ACCESS

If Section 1861 (v) (1) (i) of the Social Security Act applies to this Agreement, Subsections (i) and (ii) of that Section are made a part of this Agreement. In such an event, Philips agrees to retain and make available, and to 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.

15. **PRIVACY** In the course of providing the Services to Customer, it is necessary for Philips to have access to, view and/or download computer files from the Equipment 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, medical record number) and non-health information (e.g., date of birth, gender). Philips will process Personal Data only to the extent necessary to fulfill its Service obligations under this Agreement.

#### 16. SUBCONTRACTS AND ASSIGNMENTS

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

#### 17. 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. Either 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. The law of the state of New York will govern any interpretation of this Agreement and dispute between Philips and Customer without regard to the principles of choice of law.

CALIFORNIA

#### 18. ENTIRE AGREEMENT

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 specifically 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.

**19. AUTHORITY TO EXECUTE**

In executing this Agreement, the parties hereto acknowledge that they have read each of the terms and conditions hereof on behalf of their respective interests, that they know and understand the same, and that they have signed this Agreement as their own respective free acts and with the express authority to do so.

21584.12 (rev011810)

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Uptime Guarantee Exhibit**

This "Uptime Guarantee Exhibit" is an exhibit to the Philips Medical Systems Service Agreement Terms and Conditions (the "Agreement"). This Uptime Guarantee Exhibit provides additional terms to the Agreement.

**1. GENERAL**

Philips agrees to provide to Customer the uptime guarantee specified below on the Philips manufactured equipment ("Uptime Equipment") covered under the Agreement at the Equipment Site ("Uptime Guarantee"). Uptime Equipment does not include peripheral equipment such as external printers, archiving devices, external display monitors, or attached cameras. The terms and conditions of the Agreement are hereby incorporated into this Uptime Guarantee. This Uptime Guarantee Exhibit will remain in effect for the term of the Agreement. Philips' performance of its obligations under this Uptime Exhibit is subject to (i) Customer providing Philips a location to store one Philips remote services network router for connection to the Uptime Equipment; and (ii) Customer providing Philips with a dedicated broadband Internet access node suitable for connection to Customer's network for use in remote servicing of the Uptime Equipment. Capitalized terms not otherwise defined in this Uptime Guarantee Exhibit have the meaning set forth elsewhere in the Agreement.

**UPTIME EQUIPMENT DOES NOT INCLUDE ULTRASOUND SYSTEMS UNLESS SPECIFICALLY LISTED ON THE QUOTATION AS AN ENTITLEMENT.**

If an item of Uptime Equipment fails to achieve the Uptime Percentage (as defined below) set forth on Schedule 3(a) below, then Customer, as its sole and exclusive remedy, will receive a discount of future Agreement payment(s), as more fully described in Section 3 below.

**2. DEFINITIONS**

- a. **Uptime Equipment** has the meaning set forth in Section 1 above.
- b. **Measurement Period:** The measurement period for determining Uptime Percentage is 12 months beginning on the effective date of the Agreement and thereafter on the annual anniversary date of such effective date.
- c. **Base Hours** means the hours/day and days/week over which Uptime Hours and Downtime will be calculated during the Measurement Period. The Base Hours will be the contracted hours of coverage provided for under the Agreement for each particular piece of Uptime Equipment.
- d. **Downtime** means the time that the Uptime Equipment is unable to produce diagnostic images during the Base Hours of any given Measurement Period solely due to Philips' design, manufacturing, materials, or Service performance failure. Measurement of Downtime will commence when the Customer notifies the Philips customer service center that the Uptime Equipment is unable to produce diagnostic images. Downtime does not include time due to planned maintenance service, cryogen replenishment, installation of upgrades and updates, x-ray tube replacement, or an occurrence or condition excluded under the Agreement. The determination of the cause of Downtime is subject to verification by a Philips regional service manager.
- e. **Uptime Hours** is determined by subtracting the total Downtime from the Base Hours for a particular piece of Uptime Equipment. [Uptime Hours = Base Hours - Downtime]
- f. **Uptime Percentage** is determined by dividing the Uptime Hours by the Base Hours, and multiplying the result by 100. [Uptime Percentage = (Uptime Hours/Base Hours) x 100]

**3. ADJUSTMENT SCHEDULE**

- a. **Philips-Manufactured Uptime Equipment.** If the Uptime Percentage specified in Schedule 3(a) is not achieved for Uptime Equipment that is manufactured by Philips, the applicable discount specified in Schedule 3(a) under the Uptime Guarantee specified in the Agreement for such equipment will be made to the portion of Customer's payment(s) due under this Agreement for the piece(s) of equipment that failed to meet the applicable Uptime Percentage. The discount will be applied to all such payments due during the next Uptime Measurement Period.

**Schedule 3(a): Agreement Payment Adjustment Schedule for Philips-Manufactured Uptime Equipment**

99.99% Uptime Guarantee (Available only for Medical IT High Availability Components)		99% Uptime Guarantee		98% Uptime Guarantee		96% Uptime Guarantee	
Uptime Percentage	Discount	Uptime Percentage	Discount	Uptime Percentage	Discount	Uptime Percentage	Discount
99.99% - 100%	None	99% - 100%	None	98% - 100%	None	96% - 100%	None
96% - 99.98%	5%	96% - 98.9%	5%	95% - 97.9%	5%	91% - 95.9%	5%
92% - 95.9%	10%	93% - 95.9%	10%	92% - 94.9%	10%	<90.9%	10% *
<91.9%	15% *	<92.9%	15% *	<91.9%	15% *		

\* Maximum adjustment available

**4. UPTIME PERCENTAGE DETERMINATION:** The Uptime Percentage is determined according to the following formula:  $\text{Uptime Percentage} = (\text{Uptime Hours} / \text{Base Hours}) \times 100$ . The Uptime Percentage is then used in Schedule 3(a) above to determine the applicable discount, if any. Below are examples of how Uptime Percentage is determined:

**a. MEASUREMENT EXAMPLE # 1:**

**Base Hours = 8 AM to 5 PM Monday through Friday over the 12 month Measurement Period.**  
(9 hours x 5 days) x 52 weeks = 2,340 Base Hours  
2,340 Base Hours – 60 Downtime hours = 2,280 Uptime Hours  
 $(2280 / 2340) \times 100 = 97.4\%$  Uptime Percentage

**b. MEASUREMENT EXAMPLE # 2:**

**Base Hours = 8 AM to 9 PM Monday through Friday over the 12 month Measurement Period.**  
(13 hours x 5 days) x 52 weeks = 3,380 Base Hours  
3,380 Base Hours – 60 Downtime hours = 3,320 Uptime Hours  
 $(3320 / 3380) \times 100 = 98.2\%$  Uptime Percentage

**5. REPORTS**

Uptime Percentage performance reports will be provided at the Customer's request for any Measurement Period while this Uptime Guarantee remains in effect. One report per Measurement Period will be provided if the Customer requests a report within 60 days following the completion of the Measurement Period. Customer must notify Philips in writing if the Uptime Percentage was not achieved for a particular piece of equipment within 60 days after the end of a Measurement Period to receive any applicable discount.

**6. WARRANTY DISCLAIMER**

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

**7. LIMITATIONS OF REMEDIES AND DAMAGES**

Philips' total liability, if any, and Customer's exclusive remedy with respect to this Uptime Guarantee and Philips' performance hereunder is limited to the remedies stated herein. IN NO EVENT WILL PHILIPS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR THE COST OF SUBSTITUTE PARTS OR SERVICES, WHETHER ARISING FROM BREACH OF THE TERMS IN THIS UPTIME GUARANTEE, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT. PHILIPS WILL HAVE NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS UPTIME GUARANTEE.

(rev 4.01.04)