

## 1. OFFER, CONFIRMATION, AGREEMENT

- a) These terms and conditions (“**Terms**”) apply to all Agreements, and to quotations, proposals and offers (“**Offers**”) made by Philips Lighting UK Limited or any of its affiliates (“**Philips**”) and all acceptances, acknowledgements, purchase orders or confirmations by you (“**Customer**”) regarding the supply of products, equipment, software and/or systems (“**Products**”) and the performance of related services (“**Services**”) by Philips. “**Agreement**” means either a contract signed by Philips and Customer (collectively “**the Parties**”, individually a “**Party**”) or a purchase order signed by Customer and accepted by Philips for the supply of Products and/or performance of Services. “**Personnel**” means personnel of Philips or deployed or subcontracted by Philips in the performance of an Agreement. In case of ambiguity, conflict or inconsistency, the priority of documents will be: (i) an Agreement; (ii) any Offer by Philips; then (iii) these Terms, provided that, for terms on warranty, specific terms on warranty, indemnification and liability as referred to below will prevail. The terms “**agreed**”, “**consent**”, “**informed**”, “**notified**” or “**notice**” and documents or acts of similar meaning will be deemed to be required to be done in writing, where “**in writing**” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- b) Any terms and conditions of Customer in relation to Products or Services are explicitly rejected and will not be binding in any way on Philips. Any modification of or addition to these Terms will be valid only if expressly agreed by the Parties.
- c) Offers by Philips are open for acceptance within the period stated in such Offer or, when no period is stated, within thirty (30) days from the date of the Offer, provided that Philips may amend, withdraw or revoke any Offer at any time prior to the receipt by Philips of the acceptance by Customer of an Offer. No order submitted by Customer will be deemed accepted by Philips unless and until confirmed by Philips.
- d) Customer acknowledges that a failure to provide complete, accurate and true information or instructions to Philips may detrimentally affect Philips's ability to discharge its obligations or exercise its rights under an Agreement and Customer warrants that the information provided from time to time to Philips under an Agreement is true, correct, accurate and complete to the best of its knowledge.
- e) Where the performance under an Agreement relies on the approval, confirmation or acceptance by Customer of a (draft) proposal, design, deliverable, planning or any other action, Customer shall within seven (7) days after receipt of a request from Philips, acting reasonably, either approve or confirm same, or reject with reasons and/or request modifications, or request Philips to supply further information to clarify or substantiate, in the absence of which Customer will be deemed to have approved, confirmed or accepted same as submitted.

## 2. PRICES, INVOICING AND PAYMENT

- a) All prices and fees (“**Prices**”) are in Pounds Sterling, based on Delivery Duty Paid (INCOTERMS latest version), unless agreed otherwise between the Parties. Philips will add taxes, duties and similar levies to the Price where Philips is required or enabled by law to pay or collect such taxes, duties and levies which will be for the account of Customer.
- b) Subject to notice to Customer, Philips reserves the right to adjust Prices of Products and/or Services not yet delivered or performed to reflect variations in costs of more than five percent (5%) including but not limited to, any foreign exchange rate fluctuations, raw materials and other costs of manufacturing and distribution, or labor costs, that take effect between the date of an Offer or an Agreement and delivery of Products and/or performance of Services. In addition, if an Agreement lasts more than twelve (12) months, Philips may adjust Prices as of each 1st April for the change in the most recently published CPI index compared to twelve (12) months earlier. Note too that the Price quoted has taken into consideration certain price sensitive factors which include but are not limited to: delivery destination, method of delivery, whether expedited or timed delivery is required, offloading and packing requirements, labelling, communication requirements, delays in accepting delivery, storage expenses, cancellation costs and volume or product changes (“**Value Added Distribution Services**”). Any change to the Value Added Services after acceptance of the

quotation will incur an additional charge.

- a) If Customer requests a Variation, agrees to a Variation as proposed by Philips, or a Variation is required due to (i) changes in applicable laws or regulations, (ii) emergency situations, or (iii) incorrect or incomplete information provided by Customer and such Variation results in extra cost for Philips, Philips reserves the right to charge Customer, and Customer shall bear such extra cost with a reasonable amount for profit. “**Variation**” means a change in an Agreement which includes, but is not limited to, the addition, omission, alteration, substitution or modification of the design, quality, standard, quantity or performance (including sequence or timing) of Products and/or Services.
- b) Philips may invoice Customer upon shipment of Products or when Services have been performed as specified in the Agreement. If the Price is £100,000 - or more, Philips may require an advance payment of twenty percent (20%) of the Price within seven (7) days of the date of the Agreement. The Parties may agree on additional payment milestones. Net payment is due within thirty (30) days of date of invoice. All payments shall be made to the designated bank account of Philips. If delivery of Products and/or performance of Services are conducted in phases or milestones, each phase or milestone may be separately invoiced. In addition to any other rights and remedies Philips may have under applicable law and to the extent permitted by applicable law, interest will accrue on all late payments at the statutory rate from the due date until receipt of payment by Philips in full.
- c) The performance by Philips under an Agreement will at all times be subject to the approval of the creditworthiness of Customer by Philips. If, in the absolute judgment of Philips, Customer is likely to be unable to fulfill the payment obligations, in addition to its rights under section 2(d) Philips may require that Customer provides additional security or other conditional payment terms. If Customer is unable to provide such payment, security or assurance to Philips, Philips may, in its absolute discretion, suspend, delay or cancel any credit, delivery or any other performance.
- d) In the event of default in the payment of any invoices, fees or charges due, or any other default by Customer, Philips may suspend, delay or cancel any delivery or any other performance, or cancel any credit of Customer. Such right will be in addition to, and not in lieu of, any other rights and remedies available to Philips under these Terms, an Agreement or at law.

## 3. DELIVERY; PERFORMANCE

- a) Philips shall deliver Products and/or perform Services at the location agreed in the Agreement. Dates communicated or acknowledged by Philips are approximate only, and Philips will not be liable for, nor will Philips be in breach of its obligations to Customer, for any delay in delivery or performance, provided that Philips shall use commercially reasonable efforts to meet these dates.
- b) Philips shall use reasonable skill and care in providing the Services. Philips may change working methods, communication systems, software or any components of Services, and related documentation, provided that these will not materially reduce the functionality of the Services.
- c) Unless specifically agreed otherwise, Philips does not warrant the availability, accuracy, completeness, reliability or timeliness of data generated or displayed by Services. Customer shall not rely on Services for any other applications or purposes than agreed in an Agreement. Customer explicitly acknowledges that certain functionality of the Services may rely on the availability and correct functioning of third party service providers, as may be indicated by Philips, including supply of energy, data storage, connectivity and communication services. These are outside of the control of Philips, and Philips will have no responsibility or liability in this respect that goes beyond the services that Philips has secured from these third party service providers.
- d) If Philips fails to timely deliver Products and/or perform Services, Customer shall notify Philips of such failure and allow Philips thirty (30) days to cure such failure. If Philips does not cure within such period, Customer's sole and exclusive remedy is to cancel the

affected and undelivered or unperformed portions of the Products and/or Services.

- e) Customer shall note any damage to Products caused in transit, or shortages thereto, on transport documentation immediately upon receipt of Products, with due regard to applicable instructions by Philips or the carrier. Customer shall notify Philips of any other complaints regarding delivery of Products within seven (7) days after receipt of Products, failing which Customer will be deemed to have accepted the Products. If section 9d) applies, Philips shall at its own option and within a reasonable time, repair, make available parts, replace Products, deliver missing Products, or credit the Price paid by Customer in connection with undelivered Products and as the case may be, take back delivered Products.
- f) Minor Defects will not prevent or suspend acceptance by Customer of the Products and/or Services and shall be corrected by Philips within a reasonable time. "Minor Defects" are insignificant defects or anomalies which do not substantially hinder correct operation and normal use in accordance with the defined specifications for the Products and/or Services.
- g) Customer is responsible for: (i) the definition and the choice of Products or Services; (ii) the use of deliverables resulting from the performance of Services; (iii) (any fault in) any associated material, equipment, tooling or accessories, not supplied by or under responsibility of Philips, or not approved by Philips; and (iv) any action or activity that is required for equipment that has been modified or altered by Customer or any third party without prior consent of Philips, or any action or activity by Philips that is required for any repair, maintenance, or services performed on the Products or parts thereof, by anyone other than authorized persons of Philips.
- h) Customer shall provide all necessary site preparation work, information, instructions, site access, inspections, approvals, permits and authorizations and all other reasonable assistance in an accurate and timely manner. In the event of delay in delivery of Products or the performance of Services for reasons not attributable to Philips or due to a Variation, Philips will be entitled to a reasonable extension of time and compensation for any damages and/or costs incurred by such delay or change by Customer.
- i) Philips may move items to its workshop if that is more efficient for its performance under an Agreement.
- j) Customer is responsible for all information, constructions, orders, instructions, material, and for activities of third parties (excluding subcontractors of Philips) provided by Customer to Philips in relation to an Agreement. Philips will be entitled to rely on the accuracy and completeness of any and all information furnished by Customer in the context of an Agreement, also where Philips provides data collection, design or audit services. Upon request of Philips, Customer shall promptly provide any other information, services or support under Customer's control and relevant to the performance by Philips under an Agreement.
- k) In the event of delay or interruption in delivery of Products or the performance of Services for reasons not attributable to Philips or due to a Variation, the timelines for performance by Philips will be amended accordingly and Philips will be entitled to a reasonable compensation by Customer for any damages and/or costs incurred by such delay or change. In the event of waiting times of more than four (4) hours, Philips may charge Customer a full working day and Philips may provide Customer with a new time of the repeat visit at the cost of Customer.

#### 4. USE RESPONSIBILITIES OF CUSTOMER

This section applies where the appropriate performance of Services by Philips relies on specific use requirements of Products by Customer:

- a) Customer shall use the relevant Products and Services only for its intended purposes and in accordance with their installation and operation manuals, warranty policy and any other terms and conditions applicable to such Products and Services. Customer shall follow any instructions given by Personnel. Customer shall handle

equipment (including cabling, fittings and electricity supply) with care and shall protect it against damage and external influences.

- b) Where applicable, Customer shall use any software in accordance with applicable (end-user) software license conditions, a copy of which Philips shall provide on request. Customer shall keep a full back-up of software installed readily available. In case of a software error, Customer shall make notes of error messages and provide the information to Philips. Customer shall support Philips in updating or replacing software used in connection with performance under an Agreement.
- c) Customer shall not perform any activity (or permit such activity) on any equipment used by Philips in the performance of Services, except normal use in accordance with the specifications or with prior approval by Philips. In case of any unauthorized actions, Philips may suspend the Services until the equipment has been restored to its original compliant state, and charge Customer on the basis of a Variation, and any warranty obligations of Philips under the Agreement concerned will be null and void. Any changes to equipment owned by Philips will be exclusively owned by Philips, even if such changes have been performed by or for Customer.
- d) For activities via connection to a data-processing system from a remote location, (i) Customer shall at its own expense and risk establish external system access for service staff of Philips (or its subcontractors); and (ii) Customer shall make available technically competent staff as and when required to support Philips.
- e) In the event that Customer does not comply with these Terms, Philips may adjust any promise by Philips regarding benefits or effects of Services for the probable consequences of not complying, and, in addition, for failures or fluctuations of electric power, Force Majeure and other unusual external influences, and Variations. The consequences of such adjustments will be for the account of Customer.
- f) In case of on-site Services, Customer shall secure access to and availability of the site, including traffic management, without obstacles or any additional costs to Philips, to enable Philips to perform Services efficiently and at the agreed time schedules.
- g) At reasonable notice by Philips and during business hours, Customer shall assist Philips in verifying Customer's compliance with an Agreement.

#### 5. DESIGN SERVICES

- a) If included as part of Services, Philips shall provide design services in accordance with specifications as agreed by the Parties.
- b) All documents, data, drawings, schedules, designs or other information obtained from Philips or created by Philips in whatever form will remain the property of Philips. Unless otherwise agreed, Philips will own all IPR in deliverables from the performance of the design Services. Customer shall not use, publish, copy or disclose these without prior approval of Philips, which approval Philips may grant subject to certain conditions, including the payment of a reasonable fee.

#### 6. INSTALLATION

This section applies where Philips will perform construction, cabling, repair or installation activities ("Installation" or "Install") under an Agreement:

- a) Customer is responsible for the timely completion of the preparatory works in conformity with requirements set by Philips. Customer shall put all necessary information, material, tools, constructions and other facilities at the disposal of Philips prior to the agreed start of Installation, and in such a manner that Philips can install in the most efficient manner. Customer shall notify Philips before the start of the Installation about the location of any cables, electric power lines, water pipes or the like. Customer shall furnish to Philips surveys describing physical characteristics, legal limitations and utility locations for the Installation site.
- b) Customer shall prepare the site and maintain the site conditions (including infrastructure) in compliance with applicable laws, including, but not limited to, all health and safety, electrical and building codes relevant to the Products and any other equipment

to be Installed. Customer shall (i) not call Personnel upon site until all preparatory works have been satisfactorily completed; (ii) provide a fully qualified electrician to support Philips as and when required while working on site; (iii) provide utilities (including gas, water, electricity and connectivity), heating and necessary for the performance of the Installation; (iv) provide adequate and lockable rooms for Personnel (equipped with sanitary installations) and storage of tools and instruments on or near the site; (v) collect the materials that are replaced by Products and any other equipment supplied by Philips (and remove these from the site) and (vi) assist Philips with Installing and testing monitoring and control software.

- c) Upon request of Philips, Customer shall arrange for the temporary shut-down of facilities at the site (including, but not limited to, hot and chilled water systems) as may be reasonably required by Philips for the performance of the Installation.
- d) Philips shall Install the relevant Products and decommission the equipment to be replaced by such Products in accordance with the Agreement. Philips shall collect and remove the packaging materials of the Products it installs.
- e) Upon finalization of Installation, Philips shall notify Customer in accordance with the acceptance protocol agreed between the Parties. In the event that no such protocol has been agreed, within five (5) days after notice, Customer shall check and test the Service set-up, the Products supplied and/or Installed by Philips and notify Philips in case of any Defect, in the absence of which Customer will be deemed to have accepted the Service set-up, the Products supplied and/or Installed five (5) days after notice, without Defect. Philips shall resolve Defects so notified within a reasonable period.

## 7. TITLE AND RISK

- a) Unless explicitly agreed otherwise, title in Products that are not sold to Customer but that are used by Philips in the performance of Services, will remain the sole ownership of Philips or its financiers.
- b) Title in Products sold under an Agreement will pass to Customer only when Philips has received payment for such Products in full and, to the extent permitted by applicable law, Philips received payment in full of all other amounts due by Customer under any agreement with Philips. Until title in Products has passed to Customer, Customer shall not assimilate, transfer or pledge any of the Products, or grant any right or title in the Products to any third party, except in the normal course of business. Customer shall ensure that the Products remain identifiable as Products owned by Philips. In case of breach by Customer, Philips may request return, at Customer's cost, of Products in which the title has not yet passed and Customer shall fully cooperate to enable Philips to collect such Products and de-install if necessary, including granting Philips (or its representative) free access to the location of the Products and other equipment used by Philips in the performance of Services.
- c) Risk of loss in Products will pass to Customer upon delivery by Philips to Customer in accordance with the applicable INCOTERMS.
- d) Products delivered will not be accepted for return, nor any credit given, without prior written consent of Philips and unless the Products are returned in accordance with any applicable Philips' return procedure. Any costs incurred by Philips in handling or disposing of the Products will be borne by Customer

## 8. FORCE MAJEURE

Philips will not be liable for any failure or delay in performance resulting from (i) interruptions in the Product manufacturing process or (ii) Force Majeure. In that event, the relevant performance will be suspended for the period such interruptions or Force Majeure continues. "Force Majeure" means any circumstances or occurrences beyond the reasonable control of Philips - whether or not foreseeable at the time of an Agreement - as a result of which Philips cannot reasonably be required to execute its obligations, including non-performance by suppliers of Philips or by third parties on which Services rely (including connectivity and communication services), and further includes, without limitation, acts of God, natural catastrophes including earthquake, lightning, hurricane, typhoon, flooding or volcanic activities or extreme weather conditions, strikes, lock-outs, war,

terrorism, civil unrest, riots and similar, sabotage, vandalism, industry-wide shortages, breakdown of plant or machinery, fault or loss of electricity supply, cyberattacks and hacking. In the event that Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Philips to extend for a period of three (3) consecutive months), Philips will be entitled to cancel all or any part of an Agreement without any liability towards Customer.

## 9. LIMITED WARRANTY AND DISCLAIMER

- a) Subject to these Terms, for the limited warranty period specified in section 9c) Philips warrants to Customer that Products (excluding any software that is not embedded by Philips in or delivered with any Products or software which is subject to copyright owned by a third party) and Services will be free from Defects. A "Defect" (or "Defective") means, in relation to a Product, that a Product has a defect in material or workmanship which cause the Product to fail to operate in accordance with the agreed performance specifications, with consideration given to the overall performance of the Product (and a "Defect Product" refers to a Product with a Defect); and in relation to a Service, means that the Service has not been performed in a competent, diligent manner.
- b) Unless otherwise agreed by the Parties, Philips does not provide any warranty for third party products, software, applications or non-Philips branded products, software, or services, and customized products.
- c) Philips may provide to Customer further warranty terms specific to Products and/or Services. For such further warranty to be valid, it must be explicit and in writing. These warranty terms will be deemed to be part of these Terms.
- d) Warranty for Products will expire after one (1) year from delivery to Customer (or such other period as may be agreed upon by the Parties). Warranty for software will expire after ninety (90) days from delivery. Warranty for Services will expire one (1) year after performance of the Service, except that software-related Services are warranted for ninety (90) days.
- e) In order to be entitled to make a valid claim under warranty, Customer shall promptly notify Philips of alleged Defect Products or Defective Services prior to expiration of the warranty period. Philips shall, within a reasonable time, at its own option, repair or offer replacement products for Defect Products, or remedy or supplement any Defective Services. If despite reasonable efforts of Philips, a Defect Product cannot be repaired, no replacement product can be supplied or Defective Services cannot be remedied or supplemented, Philips shall make an appropriate refund or credit of monies paid by Customer for those Defect Products or Defective Services. Repairs, replacements or remedies will not extend or renew the applicable warranty period. Customer shall obtain consent from Philips on the specifications of any tests it plans to conduct to determine whether a Defect exists. Philips may replace Defect Products with a product that has minor deviations in design and/or specifications which do not affect the functionality of such Product. Any replaced or credited Products will become Philips property as soon as these have been replaced or credited.
- f) Customer shall bear the costs of access for remedial warranty efforts by Philips (including removal and replacement of systems, structures or other parts of Customer's facility), de-installation, decontamination, and re-installation of Defect Products.
- g) The warranties and remedies in these Terms are conditional upon (i) proper storage, installation, use, operation, and maintenance of Products, all in accordance with user manuals, warranty policies and other instructions or terms communicated by Philips to Customer; (ii) Customer keeping accurate and complete records of operation and maintenance during the warranty period and providing Philips access to those records; and (iii) modification or repair of Products or Services only as authorized by Philips. Failure to meet these conditions renders the warranty null and void. Philips will not be responsible for normal wear and tear and environmental or stress testing.
- h) The indemnification and warranty provisions in these Terms and/or an Agreement are for the protection of the Parties only and will not

establish, of themselves, any liability to third parties or the public. Nothing in these Terms or an Agreement will be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to an Agreement.

- i) Subject to the exclusions and limitations in section 12 and subject to applicable law, sections 9 and 12 state the entire liability of Philips in connection with Defect Products or Defective Services, regardless of when the Defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort or extra-contractual liability (including negligence), strict liability or otherwise, and will extend directly to Customer only and not to Customer's customers, agents or representatives. Philips expressly disclaims all other warranties, whether express or implied, including but not limited to any warranty against infringement or implied warranties of merchantability or fitness for a particular purpose. An essential purpose of the limited exclusive liabilities and remedies under the warranty is allocation of risks between Philips and Customer, which allocation of risks is reflected in the Prices.

### 10. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

- a) Subject to these Terms, the supply by Philips to Customer under an Agreement of Products and/or Services (including deliverables, documentation, application, tools in relation thereto, and/or software embedded therein) implies the non-exclusive and non-transferable limited license (without the right to grant sublicenses) to Customer under any intellectual property rights (including patents, utility models, registered and unregistered designs, copyrights, database rights, trademarks, domain names, trade secrets, and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing, collectively: "IPR") of Philips to, for Products, use or resell the Products as sold by Philips, and, for Services, to use the Services during the term of the applicable Agreement in accordance with the applicable Service description. A Product or Service may be accompanied by an (additional or not) separate (end-user) license agreement, in which event the terms of that separate (end-user) license agreement will apply as well. No rights to IPR are conferred to Customer or any third party other than explicitly granted under these Terms. This also applies where Philips provides design services.
- b) Customer shall not and shall not permit any third party to: (i) modify, adapt, alter, translate, or create derivative works from any software residing in or provided by Philips in conjunction with any Products and/or Services; (ii) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software; (iii) merge or incorporate such software with or into any other software; or (iv) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code or the algorithmic nature for such software, or to decode, de-crypt or neutralize any security measures in software or remove or circumvent the protection of software, without authorization from Philips except as explicitly allowed under applicable law; (v) perform any action with regard to software in a manner that would require the software, or any derivative work thereof, to be licensed under Open Source Terms, including but not limited to: (a) combining the software or a derivative work thereof with Open Source Software, by means of incorporation or linking or otherwise; or (b) using Open Source Software to create a derivative work of the software, where "Open Source Software" means any software that is licensed under open source license terms that require as a condition of use, modification or distribution of a work: (1) the making available of source code or other materials preferred for modification, or (2) the granting of permission for creating derivative works, or (3) the reproduction of certain notices or license terms in derivative works or accompanying documentation, or (4) the granting of a royalty-free license to any party under IPR regarding the work or any work that contains, is combined with, requires or otherwise is based on the work.
- c) Customer acknowledges that third parties may own intellectual property rights related to software and Customer shall reproduce, without any amendments or changes thereto, any proprietary

rights legends of Philips or its third party suppliers in any software or documentation provided by Philips. If and to the extent IPR in software is owned by third parties, the license terms of these third parties will apply instead of these Terms to such third party software. Additional, specific (end-user) license terms (and fees) may apply, provided that Philips has informed Customer of such terms.

- d) Philips will be free to use in any way or from any ideas, suggestions, feedback or recommendations by Customer to Philips regarding Products or Services ("Feedback"), without payment of royalties or other consideration to Customer. Feedback will be considered confidential information and be subject to section 13. Philips will own all IPR in Feedback. Philips is entitled to use deliverables and creations resulting from the performance of Services for its own publicity or for promotional purposes.

### 11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- a) Customer shall promptly notify Philips of any third party claim alleging that any of the Products and/or Services supplied under an Agreement infringes any third party IPR.
- b) Upon such notice, Philips shall at its own option and at its own expense either: (i) procure for Customer the right to continue using such Product and/or Services; or (ii) provide a replacement non-infringing product for such Product of equivalent functionality; or (iii) modify such Product such that it is no longer infringing; or (iv) remedy such Service; or (v) make an appropriate refund or credit of monies paid by Customer for that Products and/or Services.
- c) In the event that a claim referred to under section 11a) results in any legal proceedings, Customer shall give Philips full authority, at the option and cost of Philips, to settle or conduct the defence of such claim. Customer shall provide Philips with all assistance as Philips may reasonably require in connection with such defence of such claim. Customer shall not enter into any settlement in connection with any such claim, nor incur any costs or expenses for the account of Philips without the prior consent of Philips.
- d) Subject to the provisions of sections 11b) and 12, Philips shall reimburse Customer in respect of any final award of damages by a court of competent jurisdiction holding that a Product and/or Service as supplied by Philips under an Agreement directly infringes any third party IPR, provided that the infringement is held to be directly and solely attributable to the use by Customer of the Products and/or Service as supplied by Philips under the Agreement.
- e) Notwithstanding anything to the contrary provided in these Terms, Philips will not be liable for, and the obligations of Philips set out in this section 11 will not apply to: (i) any claim of infringement of third party IPR resulting from compliance with Customer's design, drawings, specifications or instructions in respect of Products and/or Services; or (ii) use of any Products, deliverables or Services other than in accordance with its specifications; or (iii) any third party IPR covering any assembly, circuit, combination, method or process, in the manufacture, testing or application in which such Products and/or Services supplied by Philips may have been used; or (iv) any claim of infringement resulting from compliance with an industry standard applying to the Products or Services; or (v) any claim based on infringement of any third party IPR where the damages claimed are directly or indirectly based on the quantity or value of products manufactured or services provided by means of the Products and/or Services, or on the volume or amount of use of Products and/or Services, irrespective of whether such claim alleges that Products and/or Services as such, or their use, infringe or contribute to the infringement of any such IPR; (vi) any claim of infringement of any third party IPR arising or made after three (3) years from the delivery of Products and/or the performance of the Services to which the claim relates; or (vii) any claim of infringement of any third party IPR arising or made after twelve (12) months from the termination or expiry of the Agreement concerned. In that event, Customer shall fully indemnify Philips against any award of damages for any such infringement and shall reimburse all costs incurred by Philips in defending any suit or proceeding for such infringement, provided that Philips promptly



notifies Customer of any such suit or proceeding for infringement and, if so requested, gives Customer full authority to conduct the defence thereof.

- f) In the event that Philips receives notice claiming infringement of third party IPR in relation to any Products and/or Services supplied or to be supplied under an Agreement, Philips may, in order to limit or avoid liability, suspend or discontinue the supply or performance to Customer of the Products and/or Services or parts to which such notice relates and Philips will not be liable to Customer by virtue of such suspension or discontinuation.
- g) Subject to the exclusions and limitations set forth in section 12, the foregoing states the entire liability of Philips for infringement of third party IPR in connection with the supply of Products and/or Services.

## 12. LIMITATION OF LIABILITY; INDEMNITY

- a) Philips will accept liability for death or personal injury resulting from its negligence, for any breach by it of Section 12 of the Sale of Goods Act 1979, for fraud or for fraudulent misrepresentation, and for any other liability which cannot be excluded by law.
- b) Philips will accept liability for direct physical damage to the tangible property of Customer to the extent that it is caused by the negligence of Philips, subject to the exclusions set out in clause 12(d) and up to a maximum limit of £2,000,000 in aggregate
- c) Except as provided in clauses 12(a) and 12(b), Philips' total liability in respect of any one default will not exceed 100% of the total purchase price of all the Goods in respect of which Philips is in default. If a number of defaults give rise to substantially the same loss or are attributable to the same or similar cause, then they will be regarded as giving rise to only one claim. Philips will be given a reasonable opportunity to remedy any default.
- d) Except as provided in clause 12(a) and 12(b) Philips will not be liable for: (i) loss of business, revenue, profits, anticipated savings (even where the same arise directly from a breach of these Conditions); or (ii) special, indirect or consequential loss, even if such loss is foreseeable by or in the contemplation of Philips.
- e) Any claims for rebates or credits shall only be valid if made within 3 months of the expiry of the period to which any written agreement to give such rebates or credits applies, or where no such agreement has been made, within 12 months of any grounds for such claim.
- f) The liability of Philips will end upon expiration of the applicable warranty period, except for claims for which Customer has given notice prior to that date by commencing an action pursuant to section 19. Any claim for damages must be brought by Customer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relating to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.
- g) If Customer supplies Products or Services to a third party, or uses Products or Services at a facility owned by a third party or the public, Customer shall either (i) indemnify and defend Philips from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this section; or (ii) require that the third party agrees, for the benefit of and enforceable by Philips, to be bound by all the limitations included in the Agreement and these Terms.
- h) The limitations and exclusions set forth above in this section will apply only to the extent permitted by applicable mandatory law.

## 13. CONFIDENTIALITY

Customer shall treat any technical, commercial and financial information and data, and Feedback, disclosed to Customer by Philips as confidential and shall not disclose such information to any third party and shall not use any such information for any purpose other than as agreed by the Parties and in relation to the Offer and/or the Agreement.

## 14. EXPORT/IMPORT CONTROLS

- a) Customer acknowledges that certain transactions of Philips are

subject to laws and regulations that prohibit export or diversion of certain products or technology to certain countries, entities or individuals, including the laws and regulations of the United Nations, the Organization for Security and Co-operation of Europe, the European Union and the United States of America (“**Export Regulations**”). The delivery, import, export, re-export or transfer of Products as well as technical assistance, training, investments, financial assistance, financing, brokering and license of technology will be subject in all respects to Export Regulations and to the jurisdiction of the relevant authorities responsible for Export Regulations. If the delivery of Products, Services or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to Export Regulations or import control regulations, Philips may suspend its obligations to Customer until such license is granted or for the duration of such restrictions or prohibitions. In the event that no such license can be obtained, or if the restriction of prohibition continues, Philips may decide, in its own discretion, to terminate the relevant order without incurring any liability towards Customer. Customer shall comply in all respects with the Export Regulations and with any export license applicable for the supply of Products and the performance of Services.

- b) Customer shall impose all export control restrictions to any third party if the Products are transferred or re-exported to third parties. Customer shall take all actions that may be reasonably necessary to ensure that such third party does not violate the Export Regulations. On the request of Philips and if required by applicable Export Regulations, Customer shall inform Philips of any export, resale or re-export of the Products in order to comply with Export Regulations and any other regulatory responsibilities governing the sale of the Products, including, requirements on traceability of Products that may apply to Philips. Neither Customer nor Philips shall provide any statement or certification in support of restrictive trade practices or boycotts.

## 15. ASSIGNMENT AND SETOFF

- a) Customer cannot assign any rights or obligations under any Agreement without the prior consent of Philips. Customer cannot withhold or reduce any payments or set off existing and future claims against any payments due for Products and/or Services sold under these Terms or any Agreement and agrees to pay the amounts hereunder regardless of any claimed set-off which may be asserted by Customer or on its behalf.
- b) Philips may delegate, assign or subcontract in part or in whole its obligations and rights (including receivables) under any Agreement to any of its affiliates or any third party without the prior consent of Customer, in which event Customer shall cooperate with Philips's efforts, including but not limited to, providing relevant information, executing documents and making payments to such accounts notified by Philips.

## 16. COMPLIANCE WITH LAWS

- a) Customer shall at all times comply with all applicable laws, conduct its business honestly, without the use of corrupt practices or acts of bribery and at all times comply with laws on prevention of bribery, as well as any other law transforming from ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (including the US Foreign Corrupt Practices Act). Customer shall not pay, provide, offer, promise or authorize to pay or provide anything of value, directly or indirectly, for the purpose of encouraging improper performance or gaining any improper advantage, whether in the public or private sector.
- b) Customer's failure to comply with any provision of this section is ground for immediate termination of any Agreement by Philips (or its respective affiliate(s)), without Philips incurring any liability towards Customer. In that event (i) Philips will be under no obligation to supply any Products and/or Services to Customer, (ii) Customer will be responsible for and shall indemnify Philips for any damages, claims, penalties or other losses (including attorneys' fees) that may be asserted against or incurred by Philips as a result of the breach by Customer of this section; and (iii) Philips will be

entitled to any other remedies available at law or in equity. The terms of this section will survive any expiration or termination of an Agreement.

- c) Philips will only do business with those companies that respect the law and adhere to ethical standards and principles. Should Philips receive any information to the contrary, Philips will inform and Customer shall cooperate and provide whatever information is necessary to allow Philips to decide whether there is any basis to any allegation received and whether an Agreement should continue. Such information includes, but is not limited to, books, records, documents, or other files.

### 17. HEALTH AND SAFETY; RECALL

- a) The Parties shall comply with all applicable legislation, rules and/or regulations on the health and safety of workers and/or employees, as well as health and safety of the public in the vicinity.
- b) Customer shall provide safe work surroundings for Personnel and other representatives and shall take those measures prescribed by law and any other measures necessary for the prevention of accidents at site and to ensure the health and safety of Personnel at the site. Customer shall timely inform Personnel of required safety precautions and advise Philips of all applicable site-specific health, safety, security and environmental requirements and procedures. Philips has the right, but not the obligation, to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the site.
- c) Customer shall ensure that no hazardous materials are present at the site. If hazardous materials are present, Customer shall arrange for the appropriate removal and disposal thereof at its own expense. If, in the reasonable opinion of Philips, the health, safety, or security of Personnel or the site is, or may be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to hazardous materials, or unsafe working conditions, Philips may, in addition to other rights or remedies available to it, evacuate some or all Personnel from the site (with the reasonable assistance of Customer), suspend performance of all or any part of an Agreement, and/or remotely perform or supervise Services (if possible) with no further liability to Customer.
- d) Philips shall notify Customer if Philips becomes aware of: (i) conditions at the site differing materially from those disclosed by Customer, or (ii) previously unknown physical conditions at site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement. If any such conditions cause an increase in the cost of, or the time required for, performance by Philips of any part of the Agreement, the Parties shall make an equitable adjustment in price and schedule.
- e) Customer shall indemnify Philips for any damages, claims, penalties or other losses (including attorney's fees) that may be asserted against or are incurred by Philips relating to any hazardous materials which are or were (i) present in or about Customer's equipment or the site prior to the commencement of Philips's Services; (ii) improperly handled or disposed of by Customer or its employees, agents, contractors or subcontractors; or (iii) brought, generated, produced or released on site by a party other than Philips.
- f) If a recall, retrofit, update, or withdrawal of any Product is required, Customer shall cooperate fully and shall provide such assistance as Philips may require. Customer shall keep accurate books and records to assure traceability of the Products in case of a product recall.

### 18. BREACH AND TERMINATION

- a) An Agreement will automatically terminate at the end of the initial term. The Parties will review six (6) months prior to this termination whether to extend an Agreement and under what terms. An Agreement cannot be extended silently or automatically.
- b) Without prejudice to any rights or remedies Philips may have under

an Agreement, these Terms or at law, Philips may, by notice to Customer, terminate with immediate effect an Agreement or any part thereof without any liability whatsoever, if (i) Customer violates or breaches any of the provisions of that Agreement or these Terms; (ii) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Customer, whether filed or instituted by Customer (voluntarily or involuntarily), a trustee or receiver is appointed over Customer, or any assignment is made for the benefit of creditors of Customer; or (iii) the control over or ownership of Customer changes. Customer shall be liable for all damages and costs suffered by Philips because of a termination pursuant to this section, including but not limited to loss of expected profits or turnover.

- c) Upon occurrence of any of the events referred to above, all payments to be made by Customer will become immediately due and payable. In the event of cancellation, termination or expiration of an Agreement, the terms and conditions destined to survive such cancellation, termination or expiration will so survive. Termination will not affect the rights of the Parties accrued up to the date of termination.

### 19. GOVERNING LAW AND FORUM

- a) The laws of England govern all Agreements and these Terms. Disputes arising out of or in connection with an Agreement or these Terms that cannot be settled through consultation in good faith within thirty (30) days after notice from either Party that a dispute exists, will be referred to and finally resolved by the non-exclusive jurisdiction of the courts in London. The United Nations Convention on Contracts for the International Sale of Goods will not apply.
- b) Nothing in this section 19 will be construed or interpreted as a limitation on either Party's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other Party.

### 20. PRIVACY AND USE OF DATA

- a) Unless otherwise stated in the Agreement, the Products and Services (including software) supplied by Philips to Customer do not involve the processing of personal data. In any case, if and when required, Philips and Customer shall each ensure compliance with applicable data protection laws.
- b) Customer acknowledges and agrees that Philips may collect information and data from the use by Customer of Products and Service ("Usage Data"). Philips is entitled to use the Usage Data, free of charge, at any time during the term of an Agreement and afterwards, in its sole discretion for any purposes whatsoever, including but not limited to, to aggregate or compile Usage Data with other data, create IPR or derivative works of or modify or adapt Usage Data to provide, maintain, and improve products and services, and to develop new products or features or services. Philips shall ensure that the use of Usage Data will exclude any data that would enable the identification of Customer or any individual or company or organization.

### 21. MISCELLANEOUS

- a) The invalidity or unenforceability of any provision of these Terms or an Agreement will not affect the validity or enforceability of any other provision hereof, all of which will remain in full force and effect. In the event of such finding of invalidity or enforceability, the Parties shall endeavor to substitute the invalid or unenforceable provision(s) by such effective provision(s) as will most closely correspond with the original intention of the provision(s) so voided.
- b) The failure or the delay of either Party to enforce any provision of these Terms will not constitute a waiver of such provision or a waiver to enforce it.
- c) An Agreement (including any terms and conditions referred to therein) states the entire understanding and agreement between the Parties as to the Products and Services. No variation of an Agreement will be binding upon either Party unless made in writing and signed by an authorized representative of both Parties