

## TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND SERVICES – PHILIPS LIGHTING UK LIMITED

### 1. OFFER, CONFIRMATION, AGREEMENT

- (a) These terms and conditions (“**Terms**”) apply to the sale or supply of all products or systems (“**Products**”), and the performance of all services (which includes any software provided as a service) (“**Services**”) by Philips Lighting UK Limited (“**Philips Lighting**”) to you (“**Customer**”) and will form a necessary part of any Offer or Agreement therefore. Customer’s ordering of Products or Services from Philips Lighting constitutes acceptance of these Terms, as such Terms may have been updated through the date of such order. As used herein, “**Agreement**” means any written agreement for supply, distribution, sale, or license of any Products or Services entered into between Philips Lighting and Customer, or any purchase order that is issued by Customer and accepted by Philips Lighting; and “**Offer**” means any quotation, proposal or offer provided to Customer by Philips Lighting.
- (b) Products and Services may include web or mobile applications that may be subject to additional terms (“**Additional Use Terms**”) or software that may be subject to additional (end-user) software license conditions (“**EULAs**”), both from either Philips Lighting or an affiliate, or third parties. Such EULAs or Additional Use Terms will be made available together with the web or mobile application or software, as applicable. Except where specified otherwise in a EULA or Additional Use Terms, such EULA or Additional Use Terms will form part of the Agreement. Software will not be sold to Customer, but licensed subject to the license terms in section 10 below.
- (c) In the event of any conflict or inconsistency between these Terms and the terms of any Agreement or Offer the terms of such Agreement or Offer will prevail. With respect to web or mobile applications or software, any Additional Use Terms or the terms of any applicable EULA will prevail over these Terms.
- (d) The terms “agreed”, “consent”, “confirmed”, “accepted”, “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. The terms “includes” or “including” will be construed without limitation to the generality of preceding words.
- (e) Any different or additional terms in any purchase order, blanket instructions, terms of purchase or other writing from Customer will be deemed a material alteration of these Terms and are expressly objected to and rejected and will be of no force or effect. Commencement of performance or shipment will not be construed as acceptance of any of Customer’s terms or conditions. Course of performance or usage of trade will not be applied to modify these Terms.
- (f) These Terms may be amended by Philips Lighting by posting an updated version on its website, provided that in respect of an Agreement and an Offer the version of the Terms applicable as of the effective date of the Agreement or the date of the Offer will apply.
- (g) Offers by Philips Lighting are open for acceptance within the period stated in such Offer or, in the event that no period is stated, within thirty (30) days from the date of the Offer, provided that Philips Lighting may amend, withdraw or revoke any Offer at any time prior to the receipt by Philips Lighting of the acceptance of an Offer. No order submitted by Customer will be deemed final or accepted by Philips Lighting unless and until confirmed by Philips Lighting.
- (h) Customer is solely responsible for the accuracy of any order, including with respect to the specification, configuration or other requirements of Products and Services, and functionality, compatibility and interoperability with other products (not authorized by Philips Lighting), as well as fitness for particular use. Customer warrants that the information provided to Philips Lighting under an Agreement is complete, accurate and true, and Customer acknowledges that a failure to provide complete, accurate and true information or instructions to Philips Lighting may detrimentally affect Philips Lighting’s ability to discharge its obligations or exercise its rights under an Agreement.
- (i) Any catalog, specification, price sheet or other similar documentation prepared by Philips Lighting is strictly for convenience only and will not be deemed as an Offer. Philips Lighting believes such documentation is complete and accurate at time of printing, but Philips Lighting does not warrant that such documentation is error free. Philips Lighting will not accept responsibility for any damages in connection with errors of measurements, descriptions, application recommendations and the like.
- (j) Products will be supplied in accordance with the standard functionalities, styles and sizes as described in Philips Lighting’s catalogs or, for special or made-to-order Products, in accordance with Philips Lighting’s drawings and specifications sheets. In the event of a conflict between an order of Customer and a drawing or specification sheet from Philips Lighting approved by Customer, the latter will prevail.
- (k) Assumptions, exclusions and qualifications stated by Philips Lighting in Offers, Agreements or otherwise will direct the Agreement and will be construed as part thereof and guide its execution and interpretation.
- (l) Where the performance under the Agreement relies on the approval, confirmation or acceptance by Customer of a (draft) proposal, design, deliverable, planning or any other action by Philips Lighting, Customer shall do so within the period stated in the Agreement, or, in the event that no period is stated, within seven (7) days after receipt of a request from Philips Lighting, in the absence of a response within such time period Customer will be deemed to have approved, confirmed or accepted as submitted by Philips Lighting.
- (m) In the event that Customer resells Products or incorporates Products and/or Services in offerings to its customer, Customer shall ensure that all its customers and/or end users of Products or Services comply with all relevant Customer’s obligations under the Agreement and these Terms, and that the terms of its agreement with each of its customer(s) or end user(s) are consistent with the Agreement and these Terms, failing which Customer shall indemnify, defend and hold harmless Philips Lighting and its affiliates, and their officers, directors, agents, employees, successors, and assigns from and against, all losses, liabilities, costs (including legal costs) and expenses arising out of or in connection with any non-compliance.

### 2. PRICES AND TERMS OF PAYMENT

- (a) In consideration of the sale of Products and/or the performance of Services by Philips Lighting, Customer shall pay all prices and fees

("Prices") in accordance with the Agreement and this section 2. Prices are in Pounds Sterling and unless agreed otherwise based on Ex Works – Philips Lighting facility (INCOTERMS latest version). Unless stipulated otherwise by the applicable INCOTERMS, Prices do not include any taxes, duties or other governmental fees, now or hereafter enacted, including value-added or similar taxes levied by any government, and Philips Lighting may add these to the Price or invoice separately, and Customer will reimburse Philips Lighting promptly on first request.

(b) Subject to notice to Customer, Philips Lighting reserves the right to adjust Prices for Products and/or Services not yet delivered or performed to reflect variations in individual costs of more than five percent (5%) including any foreign exchange rate fluctuations, raw materials and other costs of manufacturing and distribution, and labor costs, that take effect between the date of the Agreement and delivery of Products and/or performance of Services. In addition, if an Agreement has a term longer than twelve (12) months, Philips Lighting may adjust Prices as of each 1st April (i) for the change in the most recently published RPI index compared to twelve (12) months earlier; and (ii) to reflect variations in the foreign exchange rate between Pound Sterling currency and the Euro currency of more than 5% since the date of an Offer.

(c) Any cancellation, delay or other change by Customer of a purchase order previously accepted by Philips Lighting will require the prior approval of Philips Lighting and the approval will be without prejudice to any rights or remedies Philips Lighting may have under the Agreement or at law. If, on request of Customer, Philips Lighting agrees to any such change in purchase order or a change in an Agreement, including an (partial) cancellation, delay or suspension, the addition, omission, alteration, substitution or modification of the design, quality, standard, quantity, manufacturing site or performance (including sequence, quantities or timing) of Products and/or Services (each, a "Variation"), or a Variation is required due to (i) changes in applicable laws, regulations or industry standards, (ii) emergency situations, (iii) incorrect or incomplete information provided by Customer, or (iv) non-compliance by Customer of any of its obligations under an Agreement, Customer shall reimburse Philips Lighting for all costs and expenses incurred in respect of such Variation promptly on first request.

(d) Philips Lighting may invoice Customer upon shipment of Products, or when Services have been performed. Philips Lighting may require (i) Customer to pay on fixed payment days; (ii) an advance payment of (part of) the Price; and/or (iii) invoice per separate specified phase, time period or milestone of performance. Customer shall make net payment within thirty (30) days of date of invoice to the designated bank account of Philips Lighting. Customer shall pay all amounts due to Philips Lighting in full without any set-off, counterclaim, deduction or (tax) withholding.

(e) In the event Customer fails to make any payment due under an Agreement on the due date, then, whether or not Philips Lighting has made a formal demand for payment and in addition to any other rights and remedies available to Philips Lighting, to the extent permitted by applicable law: (i) all amounts due from Customer will be considered payable and non-disputed, admitted debt; (ii) Customer shall pay Philips Lighting interest on all due amounts from the due date until Philips Lighting has received full payment thereof, at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher, and shall pay Philips Lighting all costs of payment collection, including attorneys' fees; and (iii) Philips Lighting may cancel any credit issued to Customer and require, to its satisfaction, that Customer provides (additional) security, pre-payments or deposits, and may implement additional conditional payment terms or accelerate payments schedules for any outstanding performance.

(f) Philips Lighting may set off against and deduct from any amount that Philips Lighting (or any of its affiliates) owes to Customer under any agreement any amount that Customer owes to Philips Lighting or against any advance payments or deposits made by Customer. In the event that Philips Lighting sets off amounts in different currency it will use a commonly used currency conversion rate.

### 3. DELIVERY OF PRODUCTS; PERFORMANCE OF SERVICES

(a) Unless agreed otherwise, Products will be delivered Ex Works – Philips Lighting facility (INCOTERMS latest version). Philips Lighting shall perform Services at the location(s) agreed in the Agreement. Dates communicated or acknowledged by Philips Lighting are approximate only, and Philips Lighting will not be liable for, nor will Philips Lighting be in breach of its obligations to Customer, for any delay in delivery or performance, provided that Philips Lighting shall use commercially reasonable efforts to meet such dates. In the event of delay, Philips Lighting shall use commercially reasonable efforts to deliver Products or perform Services (where applicable) within a period that is reasonably needed given the cause of the delay, failing which Customer's sole and exclusive remedy will be to cancel the purchase order for undelivered Products and Services.

(b) 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 Lighting or the carrier. All Products delivered under the Agreement will be deemed accepted by Customer as conforming to the Agreement, and Customer will have no right to revoke any acceptance, unless Customer provides Philips Lighting notice of a claimed nonconformity within seven (7) days of the date of delivery. Notwithstanding the foregoing, any use of a Product by Customer or its customers after delivery will constitute acceptance of that Product by Customer. Philips Lighting shall at its option and within a reasonable time, correct nonconformities by either repair, make available parts, replace or deliver missing Products, or credit the Price paid by Customer for undelivered Products.

(c) Minor Nonconformities will not prevent or suspend acceptance by Customer of the Products, Services or both, and Philips Lighting shall correct these within a reasonable time. "Minor Nonconformities" are nonconformities or anomalies that do not hinder the overall operation and intended use of Products or Services in accordance with the specifications.

(d) Philips Lighting may make changes to the design, materials, fit and finish of Products or change working methods, communication systems, software or any other elements of Services, and Documentation provided that such changes do not materially affect the functionality of the Product or Services. Unless specifically agreed otherwise, Philips Lighting does not warrant the availability, accuracy, completeness, reliability, timeliness or output from Products and Services. Customer shall not use or rely on Products and Services for any other applications or purposes than agreed in the Agreement.

(e) Customer explicitly acknowledges that certain features or functionality of Products and Services may rely on the availability and correct functioning of third party service providers, as may be indicated by Philips Lighting, including supply of energy, data storage, connectivity and

communication services. These are outside of the control of Philips Lighting, and Philips Lighting will have no responsibility or liability in this respect.

(f) Customer is responsible for all information, orders, instructions, materials, and actions provided or performed by Customer directly or by third parties engaged by Customer (excluding subcontractors of Philips Lighting) in connection with the delivery or performance by Philips Lighting of any Products or Services. Philips Lighting will be entitled to rely on the accuracy and completeness of all information furnished by Customer, including where Philips Lighting provides data collection, design or audit services. Upon request of Philips Lighting, Customer shall promptly provide any other information, services or support under Customer's control and relevant to the performance by Philips Lighting under the Agreement.

(g) In the event of delay or interruption in delivery of Products or the performance of Services for reasons not attributable to Philips Lighting or due to a Variation, the timelines for performance by Philips Lighting will be amended accordingly. Philips Lighting will be entitled (in addition to the increased costs referred to in section 2(c)) to a reasonable compensation by Customer for any damages and/or costs incurred by such delay.

(h) In the event that an Agreement contains (minimum) stock requirements for Philips Lighting, Customer shall at first request of Philips Lighting purchase Products kept in stock under such requirement.

#### 4. USE OF PRODUCTS AND SERVICES

(a) Customer shall use Products and Services only for their intended purposes and in accordance with all instructions contained in the manuals, guidelines, warranty terms and any other terms and conditions applicable to such Products and Services or provided by any personnel of Philips Lighting, deployed or subcontracted by Philips Lighting in the performance of an Agreement ("**Personnel**"). Customer shall maintain the site, site conditions and equipment supplied and/or used by Philips Lighting in the performance of Services (including cablings, fittings and electricity supply) in good condition, repair, and working order, and shall protect same against damage and external influences.

(b) Customer shall use and, where applicable, shall cause and ensure that end-users use web-applications, mobile applications and software in accordance with applicable Additional Use Terms and/or EULAs, and where applicable, keep a full back-up of such software installed readily available. In the event of a software error, Customer shall provide Philips Lighting with alerts or error messages and support Philips Lighting in updating or replacing software used in connection with performance under the Agreement.

(c) Customer shall not perform (or permit) any activity on any equipment or software supplied and/or used by Philips Lighting in the performance of Services, except normal use in accordance with the specifications or otherwise with the prior approval by Philips Lighting. In the event of any unauthorized actions, Philips Lighting may suspend the Services until the equipment or software has been restored to its original compliant state and charge Customer on the basis of a Variation, and until confirmed any warranty obligations of Philips Lighting with respect to such Services will be null and void. Any changes to equipment or software owned by Philips Lighting (or its licensors) will be exclusively owned by Philips Lighting (or its licensors), even if such changes have been performed by or for Customer.

(d) Unless expressly included in Services, for any Services requiring connection to a system from a remote location, Customer shall at its own expense and risk establish external system access for service staff of Philips Lighting (or its subcontractors). Customer shall make available technically competent staff as and when required to support Philips Lighting and, where applicable, Customer authorizes Philips Lighting to make use of Customer's IT infrastructure to connect to and share data with specified systems and/or services to perform Services.

(e) Philips Lighting shall not be responsible for the failure of any of its Products or Services to provide the expected performance, benefits, effects or outcome arising from: (i) Customer's failure to comply with the terms under the Agreement; (ii) failures or fluctuations of electric power; (iii) sunset/shutdown of connectivity and communication technologies; (iv) Force Majeure and other unusual external influences; or (v) Variations.

#### 5. DESIGN SERVICES; DOCUMENTATION

(a) If included as part of Services, Philips Lighting shall provide design services in accordance with specifications as agreed by the Parties in writing. Unless otherwise agreed, all IPR (as defined in section 10(a)) in and to the deliverables arising out of design Services will exclusively vest in Philips Lighting or a Philips Lighting nominee. Customer shall not use, publish, copy or disclose these without prior approval of Philips Lighting, which approval Philips Lighting may grant subject to certain conditions, including the payment of a reasonable fee.

(b) All the documentation provided by Philips Lighting in connection with the Products and Services, including any user manuals or instructions, catalogs, specification sheets, data, drawings, schedules, designs, source code, or any other documents or information obtained from Philips Lighting or created by Philips Lighting in whatever form including electronic or printed format ("**Documentation**") will remain the property of Philips Lighting. Documentation is not sold to Customer, but licensed subject to the license terms in section 10 below. Unless otherwise agreed, all IPR in and to the Documentation is retained by Philips Lighting or a Philips Lighting nominee. Customer shall not use, publish, copy or disclose the Documentation except in accordance with these Terms.

#### 6. INSTALLATION; SERVICES ON-SITE

This section applies where Philips Lighting (or its subcontractor) will perform construction, cabling or installation activities ("**Installation**" or "**Install**") or other Services at a site owned or controlled by Customer.

(a) Customer is responsible for the timely completion of preparatory works and site preparations in conformity with requirements set by Philips Lighting. Customer shall prior to the agreed start of Installation or other Services on site, and in such a manner that Philips Lighting can perform in the most efficient manner and within agreed time schedules: (i) provide and maintain the site conditions (including infrastructure); (ii) provide all necessary information, instructions, inspections, authorizations, approvals, permits and notify Philips Lighting about the location

of any cables, electric power lines, water pipes or the like, including surveys describing physical characteristics, legal limitations and utility locations for the site; (iii) provide site access, including traffic management, where applicable; and (iv) put at the disposal of Philips Lighting all materials, tools, constructions and other facilities, and all other reasonable assistance in an accurate and timely manner, and at no additional costs to Philips Lighting, all in compliance with applicable laws, including all applicable health and safety, electrical and building codes.

(b) Customer shall not call Philips Lighting upon site before the obligations under section 6(a) have been satisfactorily completed. In the event of waiting times of more than four (4) hours on a day, Philips Lighting may reschedule and charge Customer a full working day for that day for the resources concerned. Customer shall (i) provide a fully qualified representative to support Philips Lighting as and when required while working on site; (ii) provide utilities (including gas, water, electricity and connectivity), heating and lighting necessary for the performance on site; (iii) provide adequate and lockable rooms for Personnel (equipped with sanitary installations) and storage of materials, tools and instruments on or near the site; (iv) decommission and collect the materials that are replaced by Products and remove these from the site; and (v) assist Philips Lighting during (performance) tests. Upon request of Philips Lighting, Customer shall arrange for the temporary shutdown of facilities at the site (including water systems).

(c) Upon finalization of Installation or other Services on-site, Philips Lighting 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 to Customer of finalization of installation or other Services on-site, Customer shall check and test the Service set-up, the Products supplied and/or Installed by Philips Lighting and, subject to sections 3(b) and 3(c), notify Philips Lighting of any Defect (as defined in section 9(a)), 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. Philips Lighting shall resolve Defects so notified within a reasonable period in accordance with section 9.

## 7. RISK AND TITLE

(a) Risk of damage to or loss of Products will pass to Customer (i) upon delivery by Philips Lighting to Customer in accordance with the applicable INCOTERM; or (ii) in the event that Philips Lighting Installs Products on-site, unless agreed otherwise, upon delivery on-site.

(b) Legal title to Products will pass to Customer only when Philips Lighting (or its financiers) has received payment for such Products in full and, to the extent permitted by applicable law, Philips Lighting received payment in full of all other amounts due by Customer under any other agreement with Philips Lighting (or any of its affiliates). Until legal title to Products has passed to Customer, Customer shall (i) 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 and against payment or subject to retention of title; and (ii) ensure that the Products remain identifiable as Products owned by Philips Lighting. In the event of breach by Customer, Philips Lighting may require that Customer return to Philips Lighting, at Customer's cost (including costs for de-installation), all Products in which the title has not yet passed and Customer shall fully cooperate to enable Philips Lighting to collect such Products and grant Philips Lighting (or its representative) free access to the location of the Products, and other equipment supplied and/or used by Philips Lighting in the performance of Services.

## 8. FORCE MAJEURE

Philips Lighting will not be liable for any breach resulting from a Force Majeure event. If a Force Majeure event occurs, Philips Lighting's performance will be suspended for the period of such Force Majeure event. "Force Majeure" means any circumstances or occurrences beyond the reasonable control of Philips Lighting, whether or not foreseeable at the time of an Agreement, as a result of which Philips Lighting cannot reasonably perform or execute its obligations, including, 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, political situation, civil unrest, riots, sabotage, vandalism, industry-wide shortages, breakdown of plant or machinery, fault or loss of electricity supply, cyber attacks and hacking or non-performance by suppliers of Philips Lighting or by other third parties on which Services rely (including connectivity and communication services). In the event that Force Majeure event extends (or is reasonably expected by Philips Lighting to extend) for a period of three (3) consecutive months, Philips Lighting will be entitled to cancel all or any part of an Agreement without any liability towards Customer.

## 9. LIMITED WARRANTY AND DISCLAIMER

(a) In most instances, Philips Lighting Products are sold subject to an applicable standard limited warranty either accompanying the product or as published on Philips Lighting's website as the standard warranty applicable for a particular Product (the "Standard Product Warranty"). For any Product that is sold by Philips Lighting that is not subject to an applicable Standard Product Warranty, Philips Lighting warrants only that for one (1) year from delivery to Customer the Products will be free from Defects. For any Services that are performed by Philips Lighting, Philips Lighting warrants only that for thirty (30) days from the performance, the Service will be free from Defects (except in respect of Installation where this thirty (30) days' warranty period will commence upon acceptance as set out in section 6(c)). A "Defect" (or "Defective") means, in relation to a Product, that a Product has any defect in material or workmanship which causes the Product to fail to operate in accordance with the specifications provided by Philips Lighting, with consideration given to the overall performance of the Product and, in relation to Services, means that the Service has not been performed in a competent, diligent manner.

(b) Unless otherwise agreed by the Parties, Philips Lighting does not provide any warranty for third party or non-Philips branded products, software, applications or services, or customized Products.

(c) Customer acknowledges that EULAs or Additional Use Terms may limit the warranty period for software (including web or mobile applications).

(d) In order to be entitled to make a valid claim under warranty, Customer shall promptly notify Philips Lighting of alleged Defective Products or Defective Services prior to expiration of the warranty period. In the event that Philips Lighting decides, in its sole discretion, that a claim under warranty is valid, Philips Lighting shall, within a reasonable time, at its own option, repair or offer replacement products for Defective Products,

or remedy or supplement any Defective Services. If despite reasonable efforts of Philips Lighting, a Defective Product cannot be repaired, no replacement product can be supplied or Defective Services cannot be remedied or supplemented, Philips Lighting shall make an appropriate refund or credit of monies paid by Customer for those Defective Products or Defective Services. Repairs, replacements or remedies will not extend or renew the applicable warranty period. Customer shall obtain consent from Philips Lighting on the specifications of any tests it plans to conduct to determine whether a Defect exists. Replacement products supplied by Philips Lighting may have minor deviations in design and/or specifications which do not affect the functionality of replaced Product. In respect of any replaced or credited Products, Philips Lighting may, in its sole discretion, either claim the property of replaced or credited Products and require Customer to return these to Philips Lighting, or instruct Customer to destroy these at Customer's costs.

(e) Customer shall bear the costs of access for remedial warranty efforts by Philips Lighting, including removal and replacement of systems, structures or other parts of Customer's facility, the de-installation of Defective Products, and the re-installation of replacement products. Customer shall not return Products to Philips Lighting without consent of Philips Lighting and unless in accordance with applicable Philips Lighting' return policies. In the event that Philips Lighting decides that a claim under warranty is not valid, Customer will bear the costs incurred by Philips Lighting in handling and testing, and the transport of Products returned.

(f) Any indemnification and warranty obligations of Philips Lighting under an Agreement 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 Lighting to Customer; (ii) Customer keeping accurate and complete records of operation and maintenance during the warranty period and providing Philips Lighting access to those records; and (iii) modification or repair of Products or Services only as authorized by Philips Lighting. Failure to meet these conditions renders the warranty null and void. Philips Lighting will not be responsible for normal wear and tear and environmental or stress testing. The warranty provided in this section 9 does not apply to damage or failure to perform arising as a result of any Force Majeure or from any abuse, misuse, abnormal use, improper power supply, powers surges or fluctuations, corrosive environments, neglect, exposure or any use or installation in violation of the instructions or restrictions prescribed by Philips Lighting or any applicable standard or code.

(g) Any indemnification and warranty obligation of Philips Lighting under an Agreement will not establish, by themselves, any liability to third parties or the public. Nothing in an Agreement will be construed to create any obligation, standard of care or liability to persons or third parties.

(h) If a recall, retrofit, update, withdrawal or any other remedial action related to any Product is required, Customer shall fully cooperate and shall provide such assistance as Philips Lighting may require. Customer shall keep accurate books and records to assure traceability of the Products in the event of a Product recall or any other remedial actions.

(i) SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET OUT IN THE AGREEMENT, AND SUBJECT TO APPLICABLE LAW, SECTIONS 9, 11 AND 12(b), (c) and (d) STATE THE ENTIRE LIABILITY OF PHILIPS LIGHTING AND ITS AFFILIATES IN CONNECTION WITH DEFECTIVE 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 ANY THIRD PARTY, INCLUDING CUSTOMER'S CUSTOMERS, AGENTS OR REPRESENTATIVES. PHILIPS LIGHTING 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 LIGHTING AND CUSTOMER, WHICH ALLOCATION OF RISKS IS REFLECTED IN THE PRICES.

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

(a) Subject to Customer's fulfillment of all obligations under the Agreement and these Terms, the supply of Products and/or Services (including software embedded in Products or Services) includes a 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, know-how, semiconductor IC topography rights and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing, collectively: "IPR") of Philips Lighting, to the limited extent that such IPR is embodied or embedded in the Products or Services purchased, to use or resell the Products (including Documentation) as sold by Philips Lighting, and/or, for Services, to use the Services (including Documentation) during the term of the applicable Agreement in accordance with the applicable Services description. No rights to IPR are conferred to Customer or any third party other than explicitly granted under the Agreement or these Terms.

(b) In respect of any (embedded) software or other applications supplied to Customer, Customer shall not and shall not permit any third party to: (i) copy, reproduce, distribute, modify, adapt, alter, translate, or create derivative works therefrom; (ii) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software or other works; (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 Lighting 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 IPR related to Products or Services. Customer shall reproduce, without any amendments or changes, any proprietary rights legends of Philips Lighting or its third party suppliers in any software or Documentation provided by Philips Lighting.

(d) Philips Lighting will be free to use in any way or form any ideas, suggestions, feedback or recommendations by Customer to Philips Lighting regarding Products or Services ("**Feedback**"), without payment of royalties or other consideration to Customer. Philips Lighting will own all IPR in Feedback. Philips Lighting is entitled to use output, 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 Lighting of any third party claim alleging that any of the Products and/or Services supplied to Customer by Philips Lighting infringes any third party IPR. Upon such notice, Philips Lighting may 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 Product and/or Services.

(b) In the event that a claim referred to under section 11(a) results in any legal proceedings, Customer shall give Philips Lighting full authority, at the option and cost of Philips Lighting, to settle or conduct the defence of such claim. Customer shall provide Philips Lighting with all assistance as Philips Lighting 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 Lighting without the prior consent of Philips Lighting.

(c) Subject to the provisions of sections 11 and 12, Philips Lighting will reimburse Customer in respect of any final award of damages by a court of competent jurisdiction holding that Products and/or Services as supplied by Philips Lighting under an Agreement directly infringe 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 Lighting under the Agreement.

(d) Notwithstanding anything to the contrary provided in the Agreement, Philips Lighting will not be liable for, and the obligations of Philips Lighting 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; or (ii) use of any Products, deliverables and/or Services other than in accordance with its specifications or any claim based on or resulting from any modification or adaptation of a Product, deliverables and/or Service made by or on behalf of Customer; 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 Lighting may have been used; or (iv) any claim of infringement resulting from compliance with an industry standard applying to the Products or Services.

(e) With regard to any claim of infringement covered by section 11 (d), Customer shall fully indemnify Philips Lighting against any award of damages for any such infringement and shall reimburse all costs incurred by Philips Lighting in defending any suit or proceeding for such infringement, provided that Philips Lighting gives Customer prompt notice in writing of any such suit or proceeding for infringement and, if so requested, full authority to conduct the defence thereof.

(f) In the event that Philips Lighting 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 Lighting may, in order to limit or avoid liability, terminate the Agreement, suspend or discontinue the supply or performance to Customer of the Products and/or Services or parts to which such notice relates and Philips Lighting will not be liable to Customer by virtue of such termination, suspension or discontinuation.

(g) Subject to the exclusions and limitations set forth in section 12, the foregoing states the entire liability of Philips Lighting for infringement of third party IPR in connection with the supply of Products and/or Services.

#### **12. LIMITATION OF LIABILITY**

(a) THE LIABILITY OF PHILIPS LIGHTING AND ITS AFFILIATES FOR ALL CLAIMS OF ANY KIND ARISING FROM OR RELATED TO THE PROVISION OF PRODUCTS OR SERVICES TO CUSTOMER, OR OTHERWISE UNDER AN AGREEMENT, INCLUDING ANY INDEMNITIES, PENALTIES OR LIQUIDATED DAMAGE ("**CLAIMS**"), WILL BE LIMITED TO A MAXIMUM, AGGREGATE TOTAL ("**LIABILITY CAP**") OF (I) ONE HUNDRED PERCENT (100%) OF THE TOTAL PRICE PAID BY THE CUSTOMER FOR PRODUCTS AND/OR SERVICES TO WHICH SUCH CLAIMS RELATE, OR (II) EUR 2,000,000, WHICHEVER IS LOWER. FOR SERVICES THAT ARE PERFORMED ON THE BASIS OF SPECIFIED PHASES, TIME PERIODS OR MILESTONES ("**MILESTONES**") AS MAY BE SPECIFIED IN AN AGREEMENT, THE LIABILITY CAP WILL FURTHER BE LIMITED TO ONE HUNDRED PERCENT (100%) OF THE TOTAL PRICE PER EACH SUCH MILESTONE FOR ALL CLAIMS ARISING FROM OR RELATED TO SUCH MILESTONE.

(b) Philips Lighting will not under any circumstances be liable for any lost profits, lost savings, loss of data, loss of reputation, loss of goodwill, indirect, incidental, punitive, special or consequential damages, whether or not such damages are based on tort, warranty, contract or otherwise – even if Philips Lighting has been advised, or is aware, of the possibility of such damages.

(c) In order to be entitled to make a valid Claim, Customer shall notify Philips Lighting of any such Claim within thirty (30) days of the date of the event giving rise to the Claim, and any lawsuit relating to a Claim must be filed within one (1) year of the date of such notification. Claims that are not brought or filed in accordance with the preceding sentence will be null and void.

(d) The limitations and exclusions of liability will apply only to the extent permitted by applicable mandatory law.

#### **13. CONFIDENTIALITY**

Customer shall maintain any technical, commercial and financial information, including any Offer and (pricing) terms, other data disclosed to

Customer by Philips Lighting, and any Feedback, 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) Certain transactions of Philips Lighting may be subject to export or import controls laws and regulations that prohibit or restrict the (re)export or transfer of certain items to certain countries, entities or individuals, such as the laws and regulations of the UN, EU and US (“**Export Regulations**”). The (re)export or transfer of Products and/or Services, as well as technical assistance, training, investments, financing, financial assistance, brokering and licensing of technology, are subject in all respects to the applicable Export Regulations and to the jurisdiction of the relevant authorities responsible for Export Regulations. If any such (re-)export or transfer requires an export or import license, or is otherwise prohibited or restricted under Export Regulations, Philips Lighting may, in its sole discretion, suspend its obligations to Customer until such license is granted or for the duration of any restrictions or prohibitions, or terminate (the relevant part of) the Agreement without incurring any liability.

(b) Customer shall impose all export control restrictions to any third party if the Products and/or Services are (re)exported or transferred to third parties. At the request of Philips Lighting and if required by applicable Export Regulations, Customer shall inform Philips Lighting on any (re)export or transfer of the Products in order to comply with Export Regulations and any other regulatory responsibilities governing the sale of the Products, including requirements on the traceability of Products that may apply to Philips Lighting. Customer shall not provide any statement or certification in support of restrictive trade practices or boycotts.

#### **15. ASSIGNMENT**

(a) Customer may not assign an Agreement, or any of its rights or obligations thereunder, without the prior consent of Philips Lighting.

(b) Philips Lighting may delegate, assign, sell, novate 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 – and if such consent would be required under applicable law, such consent is herewith provided –, in which event Customer shall cooperate with Philips Lighting’ efforts, including providing relevant information, executing documents and making payments to accounts or third parties as notified by Philips Lighting.

#### **16. COMPLIANCE WITH LAWS; ANTI-BRIBERY**

(a) Customer shall at all times comply and shall take all actions reasonably necessary to ensure that its business partners shall comply, with all applicable local and international laws and regulations, including on anti-bribery and anti-corruption and the Export Regulations. Accordingly, Customer shall conduct its business honestly and not engage in any act of bribery or corruption.

(b) Should Philips Lighting receive any indications about a breach of the obligation under (a) Customer shall cooperate and provide Philips Lighting with all information required to allow Philips Lighting to verify such indications, and if founded, section 18 will apply.

#### **17. HEALTH AND SAFETY**

(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. Customer shall provide and shall procure that its employees, agents, contractors or subcontractors 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 the 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 Lighting of all applicable site-specific health, safety, security and environmental requirements and procedures. Philips Lighting 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.

(b) Customer shall ensure that no hazardous materials are present at the site. If hazardous materials are present, Customer shall and shall procure that its employees, agents, contractors or subcontractors handle these properly and if applicable, arrange for the appropriate removal and disposal thereof at the expense of Customer. If, in the reasonable opinion of Philips Lighting, 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 Lighting 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.

(c) Conditions at a site that differ materially from those disclosed by Customer, or previously unknown physical conditions at site that differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement, will be deemed a Variation.

#### **18. BREACH; SUSPENSION; TERMINATION**

(a) In the event of (i) a breach by Customer of any of the provisions of the Agreement or these Terms, including any failure to pay any amount as and when due; or (ii) in the reasonable opinion of Philips Lighting, the financial position of the Customer (or a material change thereof) is likely to affect Customer’s ability to perform its obligations under the Agreement; or (iii) any proceedings in insolvency, bankruptcy (including reorganization), liquidation or winding up are instituted by or 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 (iv) Customer ceases, or threatens to cease, to carry on business, or (v) the control over or ownership of Customer changes, then Philips Lighting may declare all amounts outstanding by Customer immediately due and payable and may set off any amount that Philips Lighting (or any of its affiliates) owes to Customer under any agreement including any advance payments or deposits made by Customer, against amounts due pursuant to section 18(b). In addition, Philips Lighting may in its sole discretion by notice to Customer with immediate effect suspend or cancel any performance due from Philips Lighting (including production, delivery, installation and commissioning of Products, obligations under warranty

and performance of Services) or terminate the Agreement or any part thereof, without any liability, and/or suspend or cancel any credit terms offered to Customer. Philips Lighting may only use the right to terminate an Agreement pursuant to this section if, in respect of an event under (i) above that is capable of being remedied, Customer fails to remedy the breach within fourteen (14) days, or in respect of an event under (ii), Customer fails to provide Philips Lighting with a bank guarantee or other security to the satisfaction of Philips Lighting within fourteen (14) days.

(b) Customer shall indemnify, defend and hold harmless Philips Lighting and its affiliates, and their officers, directors, agents, employees, successors, and assigns from and against, all losses (including loss of profits or turnover), liabilities, costs (including legal costs and costs incurred in relation to unfinished products) and expenses arising out of or in connection with any of the following events: (i) a breach by Customer of any of the provisions or obligations of the Agreement or these Terms, or the occurrence of any of the other events set out in section 18(a); (ii) any claim by third parties for any loss, damage or injury or death caused or alleged to be caused by the negligent use, application, or installation of Products, or caused by any modification of Product or integration of Product into other products not authorized by Philips Lighting, by Customer or its contractors, agents, affiliates or customers to whom it sold Product; or (iii) non-compliance by Customer with section 7(b), in which event costs will include the full replacement costs of products, systems or other equipment.

(c) Upon (early) termination or expiration of an Agreement, (i) all rights and licenses granted to Customer under that Agreement will immediately cease; (ii) Customer shall return, delete (including from all hard disks and memory) or destroy (and a duly appointed officer shall certify to such destruction) all information disclosed under section 13, including software not embedded in Products, and all copies thereof; (iii) return to Philips Lighting, at the costs of Customer, any Products of which (legal) title has not passed to Customer (in accordance with section 7) and any other products, systems or equipment supplied and/or used by Philips Lighting in the performance of the Services; and (iv) all reasonable costs and expenses incurred by Philips Lighting (including a reasonable profit) for any activities related to work performed by Philips Lighting prior to such termination will be considered due, payable and non-refundable.

(d) In the event of a suspension that lasts for more than two (2) months, the provisions of section 18(c)(iv) will also be applicable to any activities related to work performed by or for Philips Lighting prior to such suspension.

(e) The rights of Philips Lighting pursuant to this section 18 will be in addition to any other rights and remedies Philips Lighting may have at law or in equity. In the event of termination of an Agreement, the terms and conditions destined to survive such 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, Offers and these Terms, without regard to conflict of law principles. Any legal action or proceeding arising out of or in connection with an Agreement, an Offer 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 brought exclusively in the courts of London, England, provided that Philips Lighting will always be permitted to bring any action or proceedings against Customer in any other court of competent jurisdiction. 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 to seek injunctive or other equitable relief, to take any action to safeguard its possibility to have recourse on the other Party or to bring action or proceedings in relation to any failure to pay any amount as and when due.

## 20. PRIVACY AND USE OF DATA

(a) Each Party shall comply with all applicable data protection laws. Unless agreed otherwise by the Parties, Philips Lighting (or its subcontractors) will not process information relating to any identified or identifiable natural persons ("**Personal Data**") for Customer or on Customer's behalf. In the event that Philips Lighting processes Personal Data as part of its own legitimate business purposes, it will do so in accordance with the "Philips Lighting Privacy Notice for Customers, Consumers and Other Business Persons" which is available on <http://www.lighting.philips.com/main/privacy> under the "Legal information" section

(b) Customer acknowledges and agrees that Philips Lighting and its affiliated companies (or their respective subcontractors) may collect information and data generated from Products and Services (including any third party product, service or system provided in conjunction with the Product and/or Service) and/or the use thereof ("**Usage Data**"). Philips Lighting 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 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. Unless otherwise stated in the Agreement, EULA or Additional Use Terms, Philips Lighting shall ensure that the use of Usage Data will exclude any Personal Data and any data that would enable the identification of Customer 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 thereof, 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. At reasonable notice, Customer shall assist Philips Lighting in verifying Customer's compliance with the Agreement.

(b) Any right of Philips Lighting set out in these Terms will be without prejudice to any rights or remedies Philips Lighting may have under the Agreement or at law or in equity. Customer acknowledges that Philips Lighting N.V. and any of its affiliates are intended to be third-party beneficiaries for purposes of all benefits under, and may enforce the provisions of the Agreement, including these Terms, where applicable. The failure or the delay of either Party to enforce any provision of these Terms or an Agreement will not constitute a waiver of such provision or a



waiver to enforce it.

(c) The terms of an Agreement (including these Terms and any other terms and conditions forming part thereof) state the entire understanding and agreement between the Parties as to the sale of Products and performance of Services under that Agreement and will supersede any prior promises, agreements, representations, undertakings or implications whether made orally or in writing between Philips Lighting and Customer with respect to the subject thereof. The Parties expressly acknowledge that, in entering into an Agreement, no reliance has been placed on any representations which have not been incorporated as part of that Agreement. No variation to an Agreement will be binding upon either Party unless made in writing and signed by an authorized representative of each of the Parties.

(d) Prices and terms are subject to correction for typographical or clerical errors.

Philips Lighting UK Limited – version Q1\_2018