

**General Terms and Conditions for the performance of Services, *for hardware and/or software and reports, presentations or other documentation pertaining thereto*, on a Time and Material basis, by Philips Electronics Nederland B.V. acting through Philips Innovation Services (“General Terms and Conditions”)**  
Version February 2016

**1. Quotation, confirmation and Agreement**

- 1.1 These General Terms and Conditions apply to and form an integral part of all Offers to Customer, all orders of Customer to Philips, all Confirmations by Philips, and any Agreement, all as relating to the performance of Services by Philips to Customer.
- 1.2 These General Terms and Conditions are not applicable to the secondment of employees by Philips to Customer or any other third parties.
- 1.3 These General Terms and Conditions together with the relevant Offer issued by Philips set forth the terms under which Philips offers to perform the Services and/or deliver the Deliverables to Customer. When Customer accepts Philips’ Offer, either by acknowledgment, or acceptance of any Services and/or Deliverables, a binding agreement shall be formed. Such Agreement is limited to these General Terms and Conditions as provided by Philips. Philips does not agree to any proposed amendment, alteration or addition by Customer. The Agreement can be varied only in writing signed by Philips. Any other statement or writing of Customer shall not alter, add to, or otherwise affect the Agreement.
- 1.4 Philips is not bound by and hereby expressly rejects Customer’s general conditions and any additional or different terms or provisions that may appear on any document used by Customer. Course of performance, course of dealing and usage of trade shall not be applied to modify these General Terms and Conditions.
- 1.5 Offers are open for acceptance within the period stated by Philips in the Offer or, when no period is stated, within thirty (30) business days from the date of the Offer, but any Offer may be withdrawn or revoked by Philips at any time prior to the receipt by Philips of Customer’s acceptance related thereto.

**2. Prices, Invoicing and Payment**

- 2.1 All prices in any Agreement (a) are in Euros or in the currency set forth in any Agreement, (b) do not include any applicable Taxes now or hereafter enacted and (c) are based on delivery “Ex-works” (Incoterms 2010). Philips will add Taxes to the price where Philips is required by law to pay or collect them and will be paid by Customer together with the price.
- 2.2 Customer will pay Philips the price, as specified in the Agreement, plus all specific additional costs and expenses.
- 2.3 With respect to the Services, Philips will invoice Customer for the hours spent at the prior agreed upon hourly rate (subject to revision at least once a year), as specified in the Agreement, as well as for materials and related expenses.
- 2.4 Invoices shall be submitted on a monthly basis, unless otherwise agreed in the Agreement.
- 2.5 Customer will pay all invoices in accordance with the Agreement or, if not specified, within thirty (30) calendar days as from the date on the invoice. All payments shall be made to the designated Philips’ account. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due.
- 2.6 If Customer does not pay the amount due within the stipulated term, Customer will be automatically, without Philips notification being required, in default, and will owe interest over the outstanding balance payable on a monthly basis from the due date until payment in full at the official rate of interest set by the Dutch government from time to time. Furthermore, Customer agrees to pay any costs, fees and expenses incurred by Philips in connection with the collection of the debt together with the applicable interest.
- 2.7 If, in Philips’ judgment, Customer’s financial condition at any time does not justify performance of the Services on the agreed payment terms, Philips may require full or partial payment in advance or other payment terms. If Parties fail to reach agreement on new payment

terms, Philips may suspend or, delay its performance until agreement has been reached.

- 2.8 In the event of any default by Customer in the payment of any fees, prices or costs due, or any other default by Customer, Philips is entitled to refuse the performance of the Services immediately and Philips may suspend, delay or cancel any credit, performance of the Services by Philips, until such payments are brought current or such other defaults are remedied. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law or in equity.
- 2.9 Customer shall not withhold or reduce any payment due by Customer to Philips. Customer hereby waives any and all rights to offset existing and future claims against any payment due under the Agreement or under any other agreement with Philips and agrees to pay the amounts under the Agreement regardless of any claimed offset which may be asserted by Customer or on its behalf.

**3. Title and Retention of Title**

- 3.1 Except for Philips Intellectual Property, which shall remain Philips and/or its Affiliates property at all times, Customer explicitly accepts that Philips shall retain title to the Deliverables until full payment has been received by Philips of all amounts due in accordance with the Agreement between Customer and Philips under which the Deliverables are delivered to Customer and Customer agrees not to resell the Deliverables and shall take all measures to protect the Deliverables and to ensure that Philips title to the Deliverables is in no way prejudiced. Risk of damage, loss or destruction of the Deliverables shall pass to Customer upon the delivery of the Deliverables to Customer in accordance with the Ex-works delivery condition. Customer shall insure the Deliverables at its own expense for the time they remain Philips property. If Customer fails to make any payments to Philips when due, Customer shall, upon Philips first notice, return to Philips, at Customer’s risk and expense, any Deliverables to which Philips has retained title as aforesaid.

**4. Delivery and Acceptance**

- 4.1 Timely delivery. (a) Philips shall use its Efforts to meet the Delivery Date set forth in the Agreement. Should Philips anticipate at any time its impossibility to achieve Efforts to meet the Delivery Date, Philips shall promptly notify the Customer by written notice. Such written notice shall contain the current state of the Services and/or Deliverables, the reasons for the foreseeable delay and the new reasonable period of time, to be agreed with Customer, with a minimum of thirty (30) business days, within which Philips shall use such Efforts to perform the Services and/or supply the Deliverables (“New Delivery Date”). If in spite of Philips using its Efforts, the New Delivery Date is not met, Customer may terminate the part of the Services not performed and/or Deliverables not supplied on the New Delivery Date. With respect to the breach of its delivery obligations, the foregoing states Customer’s sole and exclusive remedy and, provided Philips complies with this Clause, Philips shall not be bound by any further obligation nor be liable for any damage.  
(b) in case any or all of the conditions under Clause 5 are not properly or not timely complied with by Customer, or if Philips has to suspend Services for reasons not attributable to gross negligence or wilful misconduct of Philips, the Delivery Date set forth in the Agreement shall be automatically extended for such additional time as shall be necessary to deliver the Services, and any and all additional costs resulting thereof shall be for Customer’s account.
- 4.2 Acceptance procedure. In case any specific acceptance procedure in the Agreement has been agreed for the Deliverables, Customer agrees to execute such acceptance procedure with respect to such

relevant Deliverables within the period agreed. In case no specific acceptance procedure in the Agreement has been agreed for the Deliverables, such Deliverables will be deemed accepted on the Delivery Date unless rejected in writing within a period of ten (10) business days after delivery. Should acceptance be rejected for nonconformity of the Deliverables with the agreed acceptance criteria, Philips shall use its Efforts to correct the part of the Services not conforming to the acceptance criteria, within a reasonable period of time to be agreed with Customer, with a minimum of thirty (30) business days. The obligations of Philips described above are Philips's only obligations and Customer's sole and exclusive remedy for non-conformities of the Deliverables.

## **5. Co-operation and responsibility of Customer**

5.1 The Agreement and the description of the Services are based on information provided by Customer.

5.2 Customer shall:

(a) make available to Philips all items - such as but not limited to documents, tools, test beds and information data - necessary for Philips to perform the Services, free of charge in a timely and appropriate fashion; and

(b) make available such reliable, adequately trained, experienced and skilled employees of its organization, in sufficient number and within the timetable set forth in the Agreement, as are necessary to assist Philips in fulfilling its obligations under the Agreement and who shall perform their undertakings at Philips facilities at Customer's own risk and expense; and

(c) identify all healthcare and other regulatory and quality requirements applicable to the Services and specify them expressly to Philips as part of the Specifications, and obtain if required by law or otherwise, all necessary approvals of the relevant governmental or regulatory bodies in connection with the performance and the use of the Services; and

(d) if so requested by Philips, make available to Philips, free of charge, in good time and, if applicable, in the required numbers (i) sufficient office space, including but not limited to telephone, facsimile and e-mail connection(s), (ii) manufacturing capacity and (iii) Customer Supplies that may be necessary for the performance of the Services or for the performance of tests at such Customer locations as may be necessary to facilitate such performance; and

(e) insure Customer Supplies against risks of loss and damage to the health of Philips personnel and/or of Philips property, and retain all such risks; and

(f) if applicable, provide, free of charge, Philips personnel with adequate safety and other training and familiarize them with local procedures and house rules of Customer.

5.3 Philips will administer and care for the Customer Supplies with the same level of care as applied to Philips own similar property. Return shipments of Customer Supplies to Customer, if any, will be made under the same delivery conditions as for the supply of the Deliverables.

5.4 Customer Supplies shall comply with all applicable legal requirements relating to safety and hazardous materials. Customer undertakes that all its personnel which is located or visits Philips' premises, shall adhere to such undertakings as Philips may request including, without limitation, the premises' rules and any safety procedures.

## **6. Limited warranty and disclaimer**

6.1 Subject to Clauses 6.2 to 6.6, Philips solely warrants that it will use its Efforts to perform such Services and/or supply the Deliverables. Customer acknowledges that the results of the Services to be performed and/or the Deliverables to be supplied are experimental in nature and therefore uncertain and cannot be warranted by Philips. In case Philips does not comply with the warranty set forth above, Customer shall, within a maximum of ninety (90) business days from delivery, give written notice of such alleged non compliance to Philips. Philips shall within a reasonable timeframe with a minimum of thirty (30) business days take the necessary actions to correct the Efforts affected by the breach of the warranty, at no costs to Customer unless the costs exceed the maximum amount as specified under Clause 8.4 (l). The obligations of Philips described above are Philips' sole obligations and the Customer's sole and exclusive remedy for the breach of such warranty and with respect to the Agreement.

6.2 Philips does not provide a warranty for any third party components and materials furnished to the Customer by Philips under this Agreement; however, Philips shall use reasonable efforts to extend to the Customer the third party warranty for such component or material.

6.3 Philips does not provide any warranty of any kind for any third party software furnished to the Customer by Philips under the Agreement which are therefore delivered on an "AS IS" basis.

6.4 Unless otherwise explicitly agreed to in writing, Philips does not warrant that any Deliverables in the form of software supplied under the Agreement do not contain any Open Source Software nor bugs or viruses.

6.5 Philips will not, and therefore it is Customer's sole responsibility to assess whether the Deliverables infringe third party Intellectual Property and the Customer explicitly accepts that Philips will have no liability in this respect, even if Philips is advised of the possibility of such infringement.

6.6 EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED BY LAW, NOTHING IN THE AGREEMENT SHALL BE CONSTRUED AS AND PHILIPS EXPRESSLY DISCLAIMS ALL CONDITIONS, OBLIGATIONS, REPRESENTATIONS OR WARRANTIES, WHETHER STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO,

(A) ANY WARRANTY RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USE OF TRADE, ABSENCE OF ERRORS OR BUGS, UNINTERRUPTED OPERATION, ACCURACY OR COMPLETENESS OF RESULTS ARISING FROM THE PERFORMANCE OR USE OF THE SERVICES AND/OR SUPPLY OR USE OF THE DELIVERABLES OR ANYTHING ELSE PROVIDED BY PHILIPS UNDER THE AGREEMENT, AND

(B) ANY WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF ANY APPLICABLE INTELLECTUAL PROPERTY RIGHT, AND

(C) ANY WARRANTY OR REPRESENTATION THAT ANYTHING MADE, USED, SOLD, OR OTHERWISE DISPOSED OF UNDER ANY LICENSE GRANTED IN THE AGREEMENT OR ANYTHING PROVIDED BY PHILIPS UNDER THE AGREEMENT IS OR WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT, AND

(D) ANY OBLIGATION TO FILE PATENT APPLICATIONS, REGISTER COPYRIGHTS OR TO BRING OR PROSECUTE ACTIONS OR SUITS AGAINST THIRD PARTIES FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. PHILIPS DOES NOT WARRANT THAT THE MEDIA USED ON THE DESIGNATED HARDWARE WILL BE COMPATIBLE WITH OR PERFORM ON ANY OTHER HARDWARE COMPONENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PHILIPS, ITS AFFILIATES, DISTRIBUTORS, DEALERS, AGENTS OR ITS OR THEIR EMPLOYEES, SHALL CREATE ANY WARRANTY. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE GENERAL TERMS AND CONDITIONS AND THE AGREEMENT.

6.8 SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET FORTH IN CLAUSE 8 OF THESE GENERAL TERMS AND CONDITIONS, THE FOREGOING STATES PHILIPS' ENTIRE LIABILITY AND OBLIGATION TO CUSTOMER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE BREACH OF ANY WARRANTY.

## **7. Intellectual Property**

7.1 Nothing in these General Terms and Conditions or the Agreement including or incorporating by reference these General Terms and Conditions shall be construed by implication, estoppel or otherwise as a transfer of ownership of any Background or Foreground.

7.2 As between the Parties, ownership of Foreground shall vest in the Party that carried out the work generating such Foreground.

7.3 Any and all licenses granted pursuant Clause 7.4 up to and including Clause 7.7 shall be (i) with effect from the date of delivery of the Deliverables in accordance with Clause 3.1, (ii) perpetual, (iii) non-exclusive, (iv) non-transferable, (v) worldwide, (vi) without the right to grant sub-licenses, and shall not extend to source code.

7.4 Subject to Clause 9, insofar a Deliverable is a report, presentation or other documentation, Philips hereby grants and procures that its Affiliates grant to Customer a royalty-free license (a) to use in Customer's business the information disclosed in such Deliverable (but not any IP related to such information other than copyrights mentioned in (b) below), (b) under Philips' or as the case may be its Affiliates' copyrights associated with such Deliverable, to modify, copy, distribute or otherwise dispose of such Deliverable.

7.5 Philips hereby grants and procures that its Affiliates grant to

Customer a royalty-free license under Philips' or as the case may be its Affiliates' Background and/or Foreground to (a) use, modify, lease, sell or otherwise dispose of the Hardware Deliverable(s) made and delivered by Philips but not to make or copy said Hardware Deliverable(s), and (b) use internally within Customer's organization object code in Software Deliverable(s) made and delivered by Philips and to copy or modify such object code to the extent necessary to make such use effective.

7.6 Where a Hardware Deliverable or a Software Deliverable, made and delivered by Philips, is or is part of a means for manufacturing products, Philips hereby grants and procures that its Affiliates grant to Customer a royalty-free license under Philips' and its Affiliates Foreground to manufacture products using, in accordance with Clauses 7.4 or 7.5, such Hardware Deliverable or Software Deliverable.

7.7 Upon written request by Customer, Philips is willing to grant and to procure that its Affiliates grant to Customer, a royalty-bearing license under Philips' and its Affiliates' (a) Background and/or Foreground to copy a Hardware Deliverable or object code of a Software Deliverable and to use, modify, lease, sell or otherwise dispose of such copies, and (b) Foreground to manufacture products using, in accordance with Clauses 7.6 and 7.7(a), a copy of a Hardware and/or a Software Deliverable.

7.8 Customer shall not, unless and only to the extent permitted by licenses granted pursuant Clause 7.4 up to and including Clause 7.7, or unless and only to the extent permitted by mandatory law applicable to the Agreement: (a) copy, modify, adapt, alter, translate or create derivative works from any Software Deliverable; (b) distribute, assign, transfer, lease, rent, loan, transfer, disclose, or otherwise make available a Software Deliverable to a third party; (c) merge, incorporate or link a Software Deliverable with or into any other software; or (d) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for a Software Deliverable without written authorization from Philips.

7.9 No licenses are granted or any willingness to grant a license is undertaken under any Philips' and/or its Affiliates' IP that (i) would require payment of royalty or other consideration by Philips and/or its Affiliates to a third party; (ii) is necessarily infringed by implementing a standard adopted by a standard setting body and/or agreed between two or more companies; or (iii) is licensed as part of an industry wide licensing program.

7.10 Nothing in these General Terms and Conditions or the Agreement including or incorporating by reference these General Terms and Conditions shall be construed by implication, estoppel or otherwise as granting a license under any IP Property other than the license explicitly granted in Clause 7.4 up to and including Clause 7.7.

7.11 Customer hereby grants and procures that its Affiliates grant to Philips and its Affiliates a non-exclusive, non-transferrable, worldwide and royalty-free license under Customer's and its Affiliates' IP to the extent necessary for the performance of the Services.

## 8. Limitation of liability and indemnification

8.1 Except to the extent Losses or Third Party Claims arise from Philips' gross negligence or wilful misconduct, Philips shall not be liable for any Losses or Third Party Claims. Customer shall defend, indemnify and hold Philips harmless against any and all Third Party Claims and any Losses of Philips, arising out of or relating to (i) the death of or injury to any person or any damage to property or any other damage directly or indirectly resulting from the Customer Supplies, and (ii) any acts or omissions of Customer's or any of its Affiliates' employees, officers, agents or representatives, and (iii) Customer's breach of any of its warranties or obligations under the Agreement, and (iv) from the development, manufacture, placing on the market, delivery, sale, use or any other disposition of any Deliverables or the of the Services and (v) the infringement of any third party Intellectual Property.

8.2 Except as specifically provided otherwise in an Offer, Philips' Deliverables are not designed, authorized or warranted to be suitable for use in medical, military, air craft, space or life support equipment nor in application where failure or malfunction of a Philips' Deliverable can reasonably be expected to result in a personal injury, death or severe property or environmental damage, and inclusion and /or use of Philips' Deliverable in such equipment or applications, without prior authorization in writing of Philips, is not permitted and for Customer's own risk, and Customer agrees to fully

indemnify Philips for any damages resulting from such inclusion or use.

8.3 To the fullest extent permitted by law Philips hereby disclaims any and all liability for any consequential, special or indirect damage, loss of profits, business opportunity or goodwill or a claim of a third party even if Philips has been advised of the possibility of such damage, loss or claim WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY.

8.4 PHILIPS AND ITS AFFILIATES AGGREGATE AND CUMULATIVE LIABILITY UNDER THE AGREEMENT SHALL NOT EXCEED THE HIGHER OF (I) TWENTY PERCENT (20%) OF AMOUNT ACTUALLY RECEIVED BY PHILIPS FOR THE SERVICES PERFORMED UNDER THE RELEVANT OFFER DURING THE TWELVE (12) MONTHS IMMEDIATELY FOLLOWING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY OR OF (II) TWENTY PERCENT (20%) OF THE AMOUNT THAT WOULD HAVE BEEN DUE FOR THE PART OF THE OFFER THAT WAS MISPERFORMED.

8.5 Any claim for Losses must be notified to Philips in writing within ninety (90) business days of the date of the event giving rise to any such claim, and any lawsuit relative 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 in conflict with the preceding sentence are null and void.

## 9. Confidential Information

9.1 Neither Party shall use, employ or disclose Confidential Information received from the other Party whether orally, in writing, by demonstration or otherwise, - except to the extent necessary to implement the Agreement and in such case, subject to the prior written approval of Philips if disclosure to third parties by Customer would be necessary to implement the Agreement -, unless and to the extent the receiving Party can prove by written record that:

- (a) is or has become part of the public domain without violation of the Agreement; or
- (b) is known and on record at the receiving Party prior to disclosure by the disclosing Party; or
- (c) is lawfully obtained by the receiving Party from a third party who is not bound by similar confidentiality obligations; or
- (d) is developed by the receiving Party completely independently of any such disclosure by the disclosing Party.

9.2 In the event the receiving Party receives a subpoena or court order to disclose any Confidential Information, the receiving Party shall deliver prompt written notice to the disclosing Party and shall cooperate with the disclosing Party in its attempts to obtain a protective order or other similar protection for the Confidential Information.

9.3 The provisions of this Clause 9 shall (i) retroactively be in full force and effect from the date first contacts were established with respect to the subject matter of the Agreement and shall remain in full force and effect during the duration of the Agreement and three (3) years thereafter, or (ii) if a non disclosure agreement has been agreed upon between the Parties, this Agreement replaces such non disclosure agreement as from the effective date of this Agreement.

9.4 Immediately following the termination or expiration of the Agreement, upon request of the disclosing Party, the receiving Party will return all media containing Confidential Information and will make no further use thereof.

## 10. Termination

10.1 The Agreement enters into force on its Effective Date and will remain in force until the completion of the Services or for the term as specified in the Agreement, if any. If the Agreement has been entered into for an indefinite period, Philips may terminate the Agreement by giving three (3) months written notice to Customer, unless otherwise explicitly agreed to in writing. In no event shall Philips be liable for any compensation or damage for such termination or expiration.

10.2 Without prejudice to any of its other rights and obligations under the Agreement or at law, a Party shall be entitled, at its discretion, to suspend the performance of its obligations under the Agreement in whole or in part or to terminate the Agreement in whole or in part by means of written notice to the other Party in the event that:

- (i) the other Party files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit or creditors or similar

proceeding;

(ii) the other Party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit or creditors or similar proceeding;

(iii) the other Party ceases or threatens to cease to carry on (a part of the) business in the ordinary course;

a Party fails to comply with its material obligation (including non compliance of any payment obligations) under the Agreement, if the Party in default has failed to remedy such default within thirty (30) business days, or a longer period if indicated in the notice, as from the receipt of a written notice of default detailing in a reasonably manner the nature of the default.

10.3 Philips may terminate this Agreement in whole or in part by giving three (3) months written notice to Customer if Philips decides to discontinue the part of its business necessary for the performance of Services and/or supply of Deliverables. In no event shall Philips be liable for any compensation or damage for such termination.

10.4 Subject to Philips' written prior approval, Customer may terminate the Agreement or part thereof for convenience and Philips shall therefore stop as soon as reasonably possible the performance of the Agreement or the relevant part thereof. Upon termination for convenience, Customer shall pay Philips:

(i) all outstanding invoices for Services performed until the termination; and

(ii) costs incurred by Philips due to the early termination by Customer, including but not limited to costs of manpower of Philips own and temporary or seconded staff allocated to the performance of the Agreement incurred by Philips during the period needed to reallocate such staff; and

(iii) Ten percent (10%) of the amount Customer would have been invoiced for the remaining part of the Agreement had the Agreement been performed in full.

#### 11. Effects of Termination

11.1 If at the time of the termination or expiration of the Agreement, Customer has received the benefit of any part of the performance of the Agreement, Customer shall pay (i) immediately upon such termination or expiration, the amounts invoiced by Philips for the Services performed under the Agreement before the termination or expiration or (ii) the pro rata amounts invoiced by Philips for partial performance, as the case may be.

11.2 In the event of termination or expiration of the Agreement, the terms and conditions destined – whether expressed or not - to survive such termination or expiration, which shall include without limitation Clauses 6, 7, 8, 9, 11, 15 and 16 shall survive, provided that where the Agreement terminates pursuant to Clause 10.2 or 10.3, the rights enjoyed under Clause 7 by the non-compliant Party or, as the case may be, the Party subject to the proceedings referred to in Clause 10.3 shall not survive, but terminate.

#### 12. Force Majeure

12.1 Neither Party shall be bound to comply with any of its obligations under the Agreement if it is prevented from doing so through Force Majeure.

12.2 If the Force Majeure has lasted for more than sixty (60) business days, the other Party will be entitled to terminate with immediate effect the Agreement or part thereof by written notification, without prejudice to Philips' right to compensation for what Philips has already performed under the Agreement.

#### 13. Assignment

Customer shall not assign any rights or obligations under the Agreement without the prior written consent of Philips. Customer acknowledges and agrees that Philips may delegate and/or formally assign all or part of its rights and obligations under the Agreement to any other Philips' Affiliate or to any third party to which it has outsourced its activities in whole or in part.

#### 14. Compliance with laws and Export Control

14.1 Customer represents that, with respect to its performance under the Agreement, it will comply with all applicable laws and regulations, including but not limited to those pertaining to U.S. Export Administration or the export or import controls or restrictions of other applicable jurisdictions.

14.2 If the delivery of a Deliverable or a Service under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Philips may suspend its obligations and Customer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Philips may even terminate the Agreement, without incurring any liability towards Customer. Furthermore, if an end-user statement is required, Philips shall inform Customer immediately thereof and Customer shall provide Philips with such document upon Philips first written request; if an import license is required, Customer shall inform Philips immediately thereof and Customer shall provide Philips with such document as soon as it is available. Customer warrants that it will not deal with the Services in violation of any applicable export or import control laws and regulations.

#### 15. Non solicitation

Customer will not directly or indirectly solicit any Philips' employee for employment during the term of the Agreement and one (1) year thereafter, provided that this Clause shall not apply to the hiring or engagement of any Philips' employee who has responded at his/her own initiative to a general solicitation for employment that in essence is not focused on Philips' employees.

#### 16. Governing law and forum

16.1 All Offers, Confirmations and Agreements are governed by and shall be construed in accordance with the laws of The Netherlands, without giving regard to its conflict of law principles. The UN Convention on Contracts for the International Sale of Goods shall not apply to any Offer, Confirmation or Agreement.

16.2 All disputes arising out of or in connection with any Offer, Confirmation or Agreement shall first be attempted by Customer and Philips to be settled through consultation and negotiations in good faith and a spirit of mutual cooperation.

16.3 All disputes that have not been settled as per Clause 16.2 shall be submitted to the competent court in The Hague, the Netherlands, without prejudice to the right of Philips to bring any action or proceedings against Customer, including injunctive or other equitable relief, in any other court of competent jurisdiction.

#### 17. Miscellaneous

17.1 In the event that any provision of the Agreement or these General Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, the validity and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, provided that in such case the Parties shall use all reasonable efforts to achieve the purpose of the invalid or unenforceable provision.

17.2 Either Party's failure to exercise, or delay in exercising, any right or remedy arising from any Offer, Confirmation or Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising there from preclude any other or future exercise thereof or the exercise of any other right or remedy arising from any Offer, Confirmation or Agreement or from any related document or by law.

17.3 All notices and communications to be given under the Agreement shall be in writing and shall be deemed delivered upon hand delivery, confirmed facsimile communication, or three (3) business days after deposit in the mail of the home country of the Party, postage prepaid, by certified, registered, first class or equivalent mail, addressed to the Parties at their addresses set forth on the Offer, Confirmations and/or Agreements.

17.4 Philips reserves the right to make any amendments or modifications to these General Terms and Conditions at any time. Such amendments and modifications shall have effect on all Offers, Confirmations and Agreements referring to such amended or modified General Terms and Conditions as from the date of such Offer, Confirmation or Agreement.

#### 18. Publicity

Any reference to the name Philips on trademarks in connection with any advertisement, publication or sales literature requires Philips'

prior written permission. Copies of proposed press releases or advertisements or other communications for which permission is requested shall be submitted to Philips for Philips' prior approval in writing.

## 19. Definitions

Except as otherwise explicitly agreed to in writing, the following terms shall have the meanings set out below:

**"Affiliate"** shall mean an entity, which is directly or indirectly: (i) owned or controlled by a Party, (ii) owning or controlling such Party, or (iii) owned or controlled by the entity owning or controlling such Party, but any such entity shall only be deemed an Affiliate for the period such ownership or control exists. For the purposes of this definition, an entity shall be deemed to own or to control another entity if more than 50% (fifty per cent) of the voting stock of the latter entity, ordinarily entitled to vote in the election of directors (or, if there is no such stock, more than 50% (fifty per cent) of the ownership of or control in the latter entity) is held by and consolidated in the annual accounts of the owning or controlling entity.

**"Agreement"** shall mean the agreement setting out the terms and conditions in relation to the Services, which terms and conditions shall be those set out in these General Terms and Conditions, where applicable resulting from an Offer or Confirmation, and duly executed Philips and Customer.

**"Background"** shall mean IP owned or controlled by a Party, generated as a result of activities conducted outside the framework of the Services, and which is technically indispensable for carrying out the Services or for using Foreground.

**"Confidential Information"** shall mean any information (i) that is marked or labelled "Confidential", "Secret" or the like at the moment of disclosure or, in case of oral disclosure, is identified as confidential and confirmed in writing within 30 (thirty) days after disclosure; or (ii) of which the confidential nature is reasonably apparent under the circumstances.

**"Confirmation"** shall mean any acceptance, acknowledgement or confirmation by Philips of any order of Customer.

**"Customer"** shall mean the person or company addressed in an Offer or identified as such in the Agreement.

**"Customer Supplies"** shall mean any and all tools - including CAD systems and applicable licenses -, materials including parts of equipment, documents, information or data provided by Customer.

**"Deliverable(s)"** shall mean reports, presentations and other documentation, Hardware Deliverables and Software Deliverables that Philips has agreed to provide to Customer under or pursuant to the Agreement.

**"Delivery Date"** shall mean the last date communicated or acknowledged by Philips in writing for the delivery of the Services or the Deliverables.

**"Effective Date"** shall mean the date Philips receives the Confirmation or notice that Customer accepts the Offer.

**"Efforts"** shall mean commercially reasonable efforts consisting of having the Services performed by skilled employees in the number as set forth in the Agreement and applying the degree of care and skill ordinarily exercised by employees of the same profession in similar circumstances.

**"Force Majeure"** shall mean any circumstances or occurrences beyond a Party's reasonable control - whether or not foreseeable at the time of the Order, Confirmation or Agreement - as a result of which a Party cannot reasonably be required to execute its obligations. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, insurrections, strikes, fires, floods, earthquakes, labor disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labor, materials or components.

**"Foreground"** shall mean IP generated as a result of activities conducted within and during the framework of the Services.

**"Hardware Deliverable(s)"** shall mean any Deliverable(s) in the form of hardware, including without limitation equipment or any part thereof, but excluding any Software Deliverable(s), even if embedded.

**"Intellectual Property"** or **"IP"** shall mean information and IPRs.

**"Intellectual Property Rights"** or **"IPRs"** shall mean patents, utility certificates, utility models, industrial design rights, copyrights, database rights, semiconductor IC topography rights and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing.

**"Losses"** shall mean any and all fines, losses, damages, costs and expenses - such as but not limited to reasonable attorneys' fees -.

**"Offer"** shall mean any quotation or offer made by Philips to Customer while referring to these General Terms and Conditions.

**"Open Source Software"** shall mean any software that is licensed under Open License Terms.

**"Open License Terms"** shall mean terms that require the use, copying, modification and/or distribution of source code, a modified version or a derivative work thereof be at least partially subject to (a) making available to any third party whether royalty-free or not or (b) granting of permission to create modified versions or derivative works to any third party.

**"Party" or "Parties"** shall mean, individually, Philips or the Customer and, collectively, Philips and the Customer.

**"Philips Indemnified Parties"** shall mean Philips and its Affiliates, their trustees, shareholders, officers, directors, agents and employees. **"Philips"** shall mean Philips Electronics Nederland B.V. acting through Philips Innovation Services.

**"Services"** shall mean the services, such as but not limited to consultancy services, training services, design services or development services to be provided by Philips, including the supply of any Deliverable resulting there from as defined in the Agreement.

**"Software Deliverable(s)"** shall mean any Deliverable(s) in the form of computer software including without limitation object code and source code.

**"Specifications"** shall mean all detailed specifications, hardware, material and other specific requirements as well as acceptance criteria and packaging specifications with regard to the Deliverables as specified in detail in the annexes to the Offer or the Agreement per Deliverable.

**"Taxes"** shall mean any and all value-added tax (VAT), sales tax or like kind taxes, fees, levies, imposts, duties, assessments, charges, customs duties or withholdings of whatever nature.

**"Third Party Claim"** shall mean any claim or suit brought directly or indirectly by any third party.