

Hosted Solution Agreement
Collaboration Suite via Health Suite Digital Collaboration Suite Portal

PARTIES :

- (1) PHILIPS ELECTRONICS NEDERLAND BV, through its Digital Pathology Solutions business having a place of business at Veenpluis 6, 5684 PC, Best, the Netherlands ("**Philips**"); and
 - (2) "Site name", having a place of business at "Site address" ("**Customer**")
- entered into this Collaboration Suite Agreement ("Agreement") on the acceptance date ("Effective Date")

BACKGROUND:

- Philips has developed certain software applications and Philips IntelliSite Collaboration Suite which it makes available to customers via the internet/cloud ("PICS"), to up- and download digital pathology images and related case/patient data. Customer can act as a Receiving Party and a Sending Party or both.
- A Sending Party uploads digital pathology images and related case/patient data to receive consultation services from a pre-defined Receiving Party. Between Sending and Receiving Party a contract has to be concluded that arranges the data transfer between these two parties, in compliance with applicable laws. Philips is no party to such bilateral data transfer agreement between Sending and Receiving Parties.
- In order to get a user account for PICS, Customer enters into this Collaboration Suite agreement with Philips.
- All users of Collaboration Suite will have to accept the End User Subscription Terms when applying for access to Collaboration Suite. These End User Subscription Terms will be offered as a click-through screen when accessing PICS.

WHEREAS:

- This COLLABORATION SUITE AGREEMENT (the Agreement) is concluded between the Customer and Philips;
- Philips' role is that of a data processor on behalf of Customer;
- Philips has agreed to provide and the Customer has agreed to procure and pay for the use of PICS subject to the terms and conditions of this Agreement.

AGREED TERMS:

1. This Agreement sets out the relation between Philips and Customer, regarding the access to the Philips IntelliSite Collaboration Suite ("PICS").
2. The Agreement incorporates the General Terms set out in Schedule 1 ("**General Terms**") and the most recent version of the **End User Subscription Terms** as published on the PICS product site and the Privacy and Data Protection Agreement in Schedule 2.
3. Except for Schedule 2, the content of higher listed Schedules shall take precedence over the lower listed Schedules. In the event Customer is a paying Customer and has issued a purchase order against a quotation for Collaboration Suite, the quotation takes precedence over Schedule 1.
4. The parties acknowledge that they have read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it.
5. Unless the context otherwise requires, the definitions set out in this Agreement shall apply throughout this Agreement.

SCHEDULE 1 - GENERAL TERMS

1 INTERPRETATION

1.1 In this agreement:

Administrator means an employee appointed by Customer who is creating user accounts for Authorised users.

Affiliates means, in relation to either Party, any legal entity which is directly or indirectly: (i) owned or controlled by that Party; (ii) owning or controlling that Party; or (iii) owned or controlled by the legal entity owning or controlling that Party, but any such legal entity shall only be considered an Affiliate for as long as such ownership or control exists. For the purpose of this definition, a legal entity shall be deemed to be controlled if: (i) more than 50% (fifty per cent) of its voting stock is owned by the controlling entity; or (ii) the controlling entity has the ability to direct the business activities or appoint the majority of the directors of such legal entity.

Authorised Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services as a Sending Party or as a Receiving Party, or both; Authorised Users may: (i) view modules, sub-modules and cases; and (ii) create and/or view annotations on virtual slides.

Business Day means any day which is not a Saturday, Sunday, bank or public holiday in the Netherlands.

Confidential Information means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, customers, products or services (including without limitation the Software and its documentation) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party.

Customer means the party, including its Affiliates, who enters into this Agreement with Philips as well as the subscriber to the PICS. Customer can be act as a Sending Party as well as Receiving Party.

Customer Data means the data, content and/or images uploaded by the Sending Party and its Authorised Users, (or its sub-contractors) for the purpose of using the Services.

End User Subscription Terms means the subscription terms that all Authorized Users need to accept when entering the PICS.

Philips Materials means all command line tools, devices, documents, data, know-how, methods, processes, sample code, software, software libraries, and other inventions, works, technologies and materials, including any and all Service software, computer hardware, programs, reports and specifications, WDSLs, client software and deliverables provided or used by Philips in connection with performing the Services, in each case developed or acquired by Philips independently of this Agreement.

Purpose means the main purpose for which the Services may be used in accordance with this Agreement. PICS allows a Sending Party's pathologist to share Whole Slide Images (WSI) and case information, with another pathologist from a Receiving Party for consultation Sending and Receiving Parties will enter into a contractual relationship themselves, covering the data transfer between them.

Receiving Party means a party who receives and processes image and related data provided by a Sending Party via PICS;

Sending Party means a party who sends images and related data for the Purpose to PICS;

Services means the Collaboration Suite services and other services provided by Philips to the Customer under this Agreement via the PICS.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement. References to clauses and schedules are to the clauses and schedules of the Agreement.

2 USER SUBSCRIPTIONS

2.1 Subject to the license restrictions set out in this Agreement, Philips hereby grants to the Customer, a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Subscription Term solely for the Purpose. Customer will name an administrative user who can create and delete Authorised User accounts for members of Customer's organisation or its Affiliates.

2.2 In relation to the Authorised Users, the Customer undertakes that:

(a) it shall be responsible for compliance by Authorised Users with the terms of this Agreement;

(b) it will not allow or suffer any user subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or its documentation;

(c) each Authorised User shall keep a secure password for its use of the Services and its documentation, and that each Authorised User shall keep his password confidential;

(d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Philips within 5 Business Days of Philips' written request at any time or times;

(e) it shall permit Philips to audit the Services for compliance with data protection legislation, if needed. Such audit may be conducted no more than once per quarter, and with reasonable prior notice; and

(f) if an audit would reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Philips' other rights, Customer shall promptly disable such passwords.

2.3 Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) promotes unlawful violence;

(e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or

(f) causes damage or injury to any person or property;

- and Philips reserves the right, without liability to the Customer, to disable Customer's access to any material that breaches the provisions of this clause.
- 2.4 Customer will ensure that the Services provided hereunder are used in accordance with all applicable laws, regulations and third party rights, as well as the terms of this Agreement. Customer agrees to NOT:
- a) access (or attempt to access) the administrative interface or portal of the Services by any means other than through the interface that is provided by Philips in connection with the Services, unless it has been specifically allowed to do so in a separate written agreement with Philips,
 - b) Attempt to disable or circumvent any security mechanisms used by Philips or any Philips applications except that Customer may request in writing to test or have tested the security of Philips,
 - c) engage in any activity that intentionally interferes with or disrupts Services (or the servers and networks which are connected to the Services),
 - d) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make Services available to any third party, except as expressly authorized by this Agreement,
 - e) use the Services to provide services to third parties, unless such third party is a "Sending Party" or "Receiving Party" subscribed to the PIPS Service;
 - f) use or authorize the use of Services in any manner or for any purpose that is unlawful under applicable law and/or by any unauthorized user - and in the event of any such unauthorized access or use, promptly to notify Philips;
 - g) attempt to copy, decompile, disassemble, reverse engineer all or any part of Services or underlying software. Customer shall not develop Customer Applications to simulate or act as a single Application or otherwise access the Services in a manner intended to avoid incurring fees,
 - h) access the Services for the purpose of bringing an intellectual property infringement claim against Philips or for the purpose of creating a product or service competitive with the Services,
 - i) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or its documentation and, in the event of any such unauthorised access or use, promptly notify Philips.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any affiliate or holding company of the Customer, unless this has been agreed between parties.

3 SERVICES

- 3.1 Philips shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of the Agreement.
- 3.2 Philips shall use reasonable endeavours to inform the Customer in advance and with reasonable notice of any planned service interruption.
- 3.3 Philips may, from time to time at its discretion, generally upgrade and improve the software as it sees fit and the Customer acknowledges that such upgrades and improvements may affect its use of the Services.
- 3.4 Philips will delete slides after 1 month. Associated consult information will be deleted after 6 months and in any event at termination or expiry of the Agreement and/or violation of terms and conditions by a user.

4 PHILIPS' OBLIGATIONS

- 4.1 Philips undertakes that the Services will be performed with reasonable skill and care.
- 4.2 The undertaking in clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Philips' instructions, or modification or alteration of the Services by any party other than Philips or Philips' duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Philips will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 4.1.
- 4.3 The Customer acknowledges that it has assessed the suitability of the Services for its requirements. Philips does not warrant that the Software, the Services and/or its documentation will be suitable for such requirements or that any use will be uninterrupted or error free.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- (a) comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (b) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner.
 - (c) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
 - (d) obtain and shall maintain all necessary patient consents, and permissions necessary for Philips, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
 - (e) ensure there is an adequate contractual relationship covering the transfer of Customer Data between Customer and other Sending or Receiving Party(ies) under a Collaboration Suite Agreement,
 - (f) ensure that its network and systems comply with the relevant specifications provided by Philips from time to time;
 - (g) be solely responsible for procuring and maintaining its network connections and telecommunications links;
 - (h) provide a single main point of contact who can address questions or issues relating to the Services, provide timely feedback and review any changes to the Services; and
 - (i) be solely responsible at its own cost for uploading all Customer Data to the site provided to the Customer.
- In the event that the Customer requires any assistance from Philips in this regard, Philips may provide such assistance as it deems appropriate at its then prevailing charges.

6 PROPRIETARY RIGHTS

- 6.1** The Customer acknowledges and agrees that Philips and/or its licensors own all intellectual property rights in the Services, software and its documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, software and its documentation.
- 6.2** The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and the means by which it acquired such Customer Data.
- 6.3** Philips shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Philips shall not modify Customer Data, disclose Customer Data or access Customer Data except: (a) as required by law; (b) as expressly authorised by the Customer; (c) to address technical problems or issues with the Services; or (d) at Customer's request when providing Support.
- 6.4** Philips shall use its reasonable commercial endeavours to back-up Customer Data on a daily basis, and in accordance with the services provided by its cloud service providers. In relation to images comprised in the Customer Data, Philips shall use its reasonable commercial endeavours to ensure with its hosting provider that image data is protected from data loss and/or data corruption. In the event of any loss of or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Philips to use its reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Philips (or its hosting provider, as applicable according to the nature of the Customer Data which has been lost or damaged)

7 DATA PROCESSING

- 7.1** Customer acknowledges and agrees that it shall be responsible to enter into suitable data transfer agreements with Sending Party(ies) and/or Receiving Party(ies) for which it wishes to perform consultations. In such data transfer agreements, the following provisions shall be taken into account. If Philips processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and Philips shall be a data processor. Since Philips has no control over the location of Receiving and Sending Parties, and merely acts as a platform for information exchange, the Parties acknowledge that by using PICS;
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Philips' other obligations under this Agreement;
- (b) the Customer acknowledges that Philips will be making use of sub processors such as Amazon Web Services (AWS)
- (c) the Customer warrants that the Customer is entitled to transfer the relevant personal data to Philips so that Philips may lawfully process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
- (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 7.2.** In the framework of this Agreement and in providing Services, Philips will Process (as defined in Schedule 2) information, in any form, relating to an identified or identifiable individual ("Personal Data"), including sensitive data, of individuals whose Personal Data is provided to Philips via the Services by (or at the direction of) Customer such as, consumers, patients and employees. All processing shall be done in accordance with Schedule 2 – Privacy and Data Protection Agreement attached to and incorporated into these terms.

8. EQUIPMENT DATA

Notwithstanding the provisions of clause 7 and 9 Customer agrees that Philips may aggregate log files, device parameters and other signals collected from the Collaboration Suite site ("Anonymized Equipment Data") and use and disclose Anonymized Equipment Data for Philips' own purposes (including, but not limited to, for data analytics activities to determine trends of usage of Philips' or its affiliates' devices and services, to facilitate and advise on continued and sustained use of Philips' or its affiliates' products and services, for research, product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes). In connection with any disclosure of Anonymized Equipment Data, Philips will not associate such data with Customer's identity or the Personal Data of Customer's patients, consumers, or employees.

9. CONFIDENTIALITY.

- 9.1** Each party shall maintain the confidentiality of the other party's Confidential Information, including Personal data, and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit any third party to do so) other than as strictly necessary for the performance of its rights and obligations under this Agreement. The provisions of this clause shall not apply to any information which: (a) is or comes into the public domain without breach of this Agreement; or (b) was in the possession of the Receiving Party prior to receipt from the disclosing party without an obligation of confidence; or (c) was obtained from a third party free to divulge such information; or (d) is required to be disclosed by law or by any legal, regulatory or administrative body.

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INDEMNITY

- 10.1 The Customer shall defend, indemnify and hold harmless Philips against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with its and/or the Authorised Users' use of the Services including, without limitation, for any liability, damages, costs or claims incurred by Philips due to the Customer's use of the Services for any purpose outside of the Purpose, or other breach of its obligations hereunder.
- 10.2 Philips shall, subject to clause 10.5 and the limitations in clause 11, defend the Customer against any claim that the Services infringe any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (a) Philips is given prompt notice of any such claim; (b) the Customer provides reasonable co-operation to Philips in the defence and settlement of such claim, at Philips' expense; and (c) Philips is given sole authority to defend or settle the claim.
- 10.3 In the defence or settlement of any claim, Philips may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall Philips, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
(a) a modification of the Services by anyone other than Philips; or
(b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Philips; or
(c) the Customer's use of the Services after notice of the alleged or actual infringement from Philips or any appropriate authority.
- 10.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Philips' (including Philips' employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

11 LIMITATION OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of Philips (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
(a) any breach of this Agreement (including without limitation, any claim under clause 10.2);
(b) any use made by the Customer of the Software, Support or any part of them; and
(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 Except as expressly and specifically provided in this Agreement:
(a) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent authorised by applicable law, excluded from this Agreement;
(b) the Services and all other services provided, procured and/or sub-contracted by Philips under this Agreement, are provided to the Customer on an "as is" basis; and
(c) the Customer assumes sole responsibility for results obtained from the use of the Services and its associated documentation by the Customer and Authorised Users, and for conclusions drawn from such use. Philips shall have no liability for any damage caused by errors or omissions in any information, instructions or data provided to Philips by the Customer in connection with the Services, or any actions taken by Philips at the Customer's direction.
- 11.3 Nothing in this Agreement excludes the liability of either Party:
(a) for death or personal injury caused by such Party's negligence; or
(b) for fraud or fraudulent misrepresentation.
- 11.4 Subject to clauses 11.2 and clause 11.3:
(a) Philips shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of (personal) data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
(b) Philips' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

12 TERM AND TERMINATION

- 12.1 This Agreement shall take effect on the Effective Date and shall (unless terminated earlier in accordance with this Agreement) continue in full force and effect for the Initial Subscription Term, which is 1 year from the Effective Date, and thereafter shall be automatically renewed for successive periods of 12 months each (each, a Renewal Period) unless and until terminated by either party by not less than 6 months' written notice to the other party, save that the earliest date on which such notice may take effect is the expiry of the Initial Subscription Term, or, following renewal, the expiry of the relevant Renewal Period. Any Renewal Period shall be deemed included within the duration of this Agreement.
- 12.2 Philips may terminate the Services at its own discretion at any time, with a notice period of one month.
- 12.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
(a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
(b) an order is made or a resolution is passed for the winding up of the other party or if an order is made for the

appointment of an administrator to manage the affairs, business and property of the other party, or if such an administrator is appointed or if documents are filed with the court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder, or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt; or
(c) the other party ceases, or threatens to cease, to trade.

- 12.4 On expiry or termination of this Agreement for any reason:
(a) all licences granted under this Agreement shall immediately terminate;
(b) each party shall return and make no further use of any Confidential Information belonging to the other party; and
(c) the accrued rights of the parties as at expiry or termination, or the continuation after expiry or termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and
(d) Philips may destroy or otherwise dispose of any of the Customer Data in its possession.

13 GENERAL

- 13.1 Philips shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Philips or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Philips or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
- 13.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 13.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 13.4 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 13.5 This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 13.6 Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld, delayed or conditioned), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 13.7 Customer agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. Specifically, Customer covenants that it shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any software, source code, or technology (including products derived from or based on such technology) received from Provider under this Agreement to any country (or national thereof) subject to antiterrorism controls or U.S. embargo, or to any other person, entity, or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Customer agrees to indemnify, to the fullest extent permitted by law, Provider from and against any fines or penalties that may arise as a result of Customer's breach of this provision.
- 13.8 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 13.9 Notwithstanding any other provisions of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
- 13.10 Any notice required or Authorised to be given under this Agreement shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified in this Agreement or such other address as either party may notify in writing to the other from time to time for this purpose. Any notice shall be treated as having been served on delivery if delivered by hand, 4 Business Days after posting if sent by pre-paid first class post, and on completion of transmission if sent by facsimile (subject to receipt of acknowledgement of successful transmission).
- 13.11 The construction, validity and performance of this Agreement shall be governed by the laws of the Netherlands, and the parties submit to the exclusive jurisdiction of the courts of Amsterdam.
- 13.12 This Agreement may be executed in any number of counterparts, each of which will be considered an original, but all of which together will constitute the same Agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this Agreement.
- 13.13 No variation of this Agreement shall be effective unless it is in writing and signed by authorised representatives of each of the parties.

SCHEDULE 2 - PRIVACY AND DATA PROTECTION

1. PARTIES

This Privacy and Data Protection Agreement (“**PDPA**”) is made and entered into on the Effective Date as set out in the Commercial Terms by and between the Parties to the Collaboration Suite Agreement to which this Schedule 2 is attached.

2. RECITAL

- (A) **Subject matter:** On the Effective Date, the Parties concluded a Collaboration Suite Agreement for the provision by Philips to Customer of certain software Services as set out in the **Collaboration Suite Agreement**, and together with this PDPA, “**Agreement**”.
- (B) **Nature, purpose, categories of Persona Data and Data Subjects:** For the purpose or in the framework of that Agreement, Philips may come to process Personal Data, including Sensitive Data, of individuals, such as employees or patients. This PDPA sets out the terms and respective rights and duties of the Parties in respect of such Processing of Personal Data.
- (C) **Duration:** This PDPA is intended as a schedule to the Collaboration Suite Agreement. Subject to Section 14.3, the PDPA will automatically terminate upon termination of the Collaboration Suite Agreement.

3. COMPLIANCE WITH CUSTOMER INSTRUCTIONS AND APPLICABLE LAW

- 3.1 Philips will Process Personal Data only on instruction of Customer as set out in the Agreement and/or other communications made by Customer to Philips (where such instructions are consistent with the terms of the Agreement) (“**Instruction**”), unless otherwise required by Applicable Law. Customer warrants (a) that its Instructions will comply with Applicable Law including in relation to the protection of Personal Data and (b) that its Instructions will not cause Philips to violate Applicable Law.

4. SCOPE OF PROCESSING

- 4.1 Without prejudice to other Instructions, Customer hereby instructs Philips to Process Personal Data for or in relation to performing the Services and other obligations under the Agreement, and as necessary to comply with other reasonable instructions provided by Customer where such instructions are consistent with the terms of the Agreement.
- 4.2 Customer represents and warrants to Philips that:
 - (1) Customer has the right and the authority to provide the Personal Data to Philips for Philips’ use of such data pursuant to this Agreement, including transfers as set out in Section 13;
 - (2) Customer has provided any required notices and obtained any required consents from individuals as required by Applicable Law to collect and process their Personal Data (which may include medical and health data);
 - (3) Customer is fully and solely responsible for the accuracy, legality and consistency of the Personal Data it provides to Philips, and
 - (4) Customer’s provision to Philips of the Customer Data and Philips’ use of Personal Data pursuant to this Agreement will not violate any Applicable Law, or privacy policy.

5. SECURITY

- 5.1 Philips will take appropriate commercially reasonable technical and organizational measures to protect the Personal Data, at a level appropriate to the risk, of accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access during the Processing. To that effect, Philips has implemented measures such as those set out below in Annex 2.

6. DATA SECURITY BREACHES

- 6.1 Philips will notify Customer without undue delay after becoming aware that a Data Security Breach has occurred, unless otherwise prohibited, such as where a law enforcement or supervisory authority requests Philips not to do so. In such case, notification will be delayed as instructed by such law enforcement or supervisory authority.

7. DISCLOSURES AND CONFIDENTIALITY

- 7.1 Philips will seek to ensure that any employee it authorizes to Process Personal Data under this PDPA is required to maintain the confidentiality of the Personal Data.
- 7.2 Philips shall keep Personal Data confidential and shall not disclose Personal Data in any way to any Employee or Third Party without the prior written approval of Customer, except where,
 - (i) the disclosure is required for the performance of the Processing, or

(ii) where Personal Data need to be disclosed [optional: to a competent public authority] to comply with a legal obligation or as required for audit purposes.

8. SUB-PROCESSORS

- 8.1 Customer acknowledges and agrees that Philips may use and engage Sub-Processors to Process Personal Data. Philips will maintain a list of the key Sub-Processors that Philips uses and provide Customer with a mechanism to obtain notice of any new Sub-Processors. To the extent that Customer is established in the EEA, Customer may within five business days of such notice, object to the involvement of such new Sub-Processor in the delivery of the relevant Services by providing objective justifiable grounds related to the ability of such Sub-Processor to protect the Personal Data or comply with applicable data protection or security requirements. In the event that the objection is not unreasonable, the Parties will work together in good faith to find a solution to address such objection, including but not limited to reviewing additional documentation supporting the Sub-Processors' compliance or trying to make the Services available without the involvement of such Sub-Processor.
- 8.2 Philips will ensure that Sub-Processors are contractually bound to similar data protection obligations with respect to the Processing of the Personal Data as those to which Philips is bound to under this PDPA.

9. CUSTOMER AUDIT RIGHT

- 9.1 Philips will, at Philips' option, and upon reasonable notice from Customer:
- (i) make available the facilities it uses for the Processing of Personal Data for an audit by a qualified independent third party assessor at Philips's selection, and provided such auditor has executed a written confidentiality agreement reasonably acceptable to Philips before conducting the audit. Audits will be conducted regularly, but no more than once per year, during regular business hours and with minimal disruption to Philips' business, and will be subject to
 - (a) a written request submitted to Philips at least six weeks in advance of the proposed audit date,
 - (b) a detailed written audit plan reviewed and approved by Philips' security organization,
 - (c) Philips' policies, including in relation to onsite health and safety, security and confidentiality, and
 - (d) applicable laws on privacy and data protection.As soon as reasonably possible after completion of an audit, Philips will provide Customer with a copy of the audit report, which will be treated as confidential information pursuant to the terms of the Collaboration Suite Agreement; or
 - (ii) provide to Customer a certification issued by a qualified independent third party assessor that the Philips business processes and procedures that involve the Processing of Personal Data comply with this PDPA. The costs of the audit or certification will be at Customer's sole expense.

10. COOPERATION

- 10.1 **General cooperation duty:** Parties will provide each other with reasonable assistance and cooperation to enable them to fulfill their legal obligations, to the extent permitted by Applicable Law.
- 10.2 **Requests from individuals:** Philips will notify Customer without unreasonable delay of requests received directly from individuals in relation to the Processing of their Personal Data on behalf of Customer, unless Philips is prohibited from doing so under Applicable Law. Unless otherwise instructed in writing by Customer within 24 hours of such notice by Philips, Philips will not reply directly to the individual, but will seek to provide Customer with reasonable assistance in meeting the individuals' request in a timely manner.

11. RETURN AND DELETION OF PERSONAL DATA

- 11.1 To the extent Philips holds Personal Data, upon termination of the Agreement, Philips will, at the option of Customer, (i) securely delete Personal Data or (ii) return Personal Data and copies thereof in accordance with Philips' policies including on data exporting, except to the extent Philips is authorized or required by the Agreement or Applicable Law to retain and Process that Personal Data.

12. LIABILITY AND INDEMNITY

- 12.1 Philips' total liability for all claims as a result of breaches of Philips' and any Sub-Processor's data protection obligations under the Agreement or otherwise in connection with the Services will be limited to direct damages resulting from negligence by, and attributable to, Philips (excluding, without limitation, any indirect or consequential damages, lost profits or revenue, lost turnover, cost of capital, and downtime cost) up to the financial cap as set out in the Collaboration Suite Agreement.

13. CROSS-BORDER TRANSFERS

- 13.1 As part of the Services, Philips may require the support of affiliates or third parties acting as Sub-Processors, including from or in locations outside the EEA.

- 13.2 **For inter-affiliate transfers:** Philips' BCR and the additional terms in this Section 13 will apply to Philips's Processing of Personal Data on behalf of Customer in relation to this Agreement, where such Personal Data are (i) subject to any Data Transfer Restrictions (as defined in the BCR) and (ii) processed by Philips in a non-Adequate country (as defined in the BCR). The most current version of the BCR is available on Philips' website, currently located at <http://www.philips.com/privacy>. The terms of the BCR are incorporated by reference into and are an integral part of this PDPA. Customer will:
- (a) ensure that individuals are informed that their Personal Data may be transmitted to Philips and its affiliates, including to a non-Adequate country, and
 - (b) provide a copy of the BCR upon request to individuals, as well as a copy of this PDPA, redacted of any information of a confidential, proprietary or commercial nature.
- Philips will make commercially reasonable efforts to maintain and extend the EU authorization of such BCR for the duration of the PDPA and will promptly notify Customer of any subsequent material changes in the EU authorization of the BCR. Philips shall provide reasonable cooperation to Customer (where applicable) to apply for any permit, authorization or consent that may be required under applicable data protection law in respect of the implementation of this Section.
- 13.3 **For transfers to third parties:** Philips will ensure that transfers to third parties acting as Sub-Processor occur on the basis of a legally recognized transfer mechanism, in accordance with the BCR.

14. MISCELLANEOUS

- 14.1 Any notice required under this PDPA will be given in writing at the addresses set out in the Collaboration Suite Agreement, or as otherwise communicated between the Parties
- 14.2 Each Party may terminate this PDPA in accordance with the rights and procedures set out in the Collaboration Suite Agreement
- 14.3 Termination of this PDPA is without prejudice to the Sections of this PDPA which are designed to survive termination, in particular Sections 11 and 12
- 14.4 If there are any conflicts or inconsistencies between this PDPA and the Collaboration Suite Agreement, the provisions in the Collaboration Suite Agreement prevail, unless the provisions in the Collaboration Suite Agreement refer specifically to Customer/Client (or any equivalent term designating Customer) information/data in as far as this concerns Personal Data, in which case the provisions of this PDPA will prevail.

Annex 1 (PDPA) – Definitions

Capitalized terms in this PDPA not otherwise defined in this PDPA and/or below have the meaning set out in the Collaboration Suite Agreement.

Agreement	has the meaning set out in Section 2.
Applicable Law	means any law, regulatory requirement, sectorial recommendation, and best practice issued by relevant national and international public authorities or other public bodies, applicable to the provision of the Services (including the Processing of Personal Data), or otherwise applicable to Philips and/or Customer.
BCR	means Philips' Binding Corporate rules, i.e., the internal rules adopted by Philips which define the global policy and establish a framework for protecting Personal Data within the organization when Philips acts as a Data Processor, with regard to the international transfers of Personal Data within the Philips group within the meaning of Article 26 (2) of the Directive and Article 47 of the GDPR, which policy has obtained EU wide authorization.
Customer	has the meaning set out in Section 1. For the purpose of this PDPA, Customer will be the Data Controller.
Data Controller, Data Processor, Data Subject and Processing	have the same meaning as in the Directive and the GDPR.
Data Security Breach	<ul style="list-style-type: none"> - means the unauthorized acquisition, access, use or disclosure of unencrypted Personal Data that compromises the security or privacy of such Personal Data to the extent the compromise poses a significant risk of financial, reputational, or other harm to the Personal Data. - A Data Security Breach is deemed not to have occurred where there has been an unintentional acquisition, access or use of unencrypted Personal Data by an employee of Philips or Customer or an individual acting under their respective authority, if <ul style="list-style-type: none"> - the acquisition, access, or use of Personal Data was made in good faith and within the course and scope of the employment or professional relationship of such employee or other individual; and - the Personal Data is not further acquired, accessed, used or disclosed by any person.
Directive	means the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, or any successor thereto.
EEA	means all member states of the European Union, Norway, Iceland, Liechtenstein and, for the purposes of the Agreement, Switzerland.
Effective Date	means the date set out in Section 1 as of which this PDPA is effective.
GDPR	Means the EU General Data Protection Regulation 2016/679 as a replacement to the Directive on 25 May 2018 and thereafter
Instruction	has the meaning set out in Section 3.1.
Party	has the meaning set out in Section 1.
PDPA	has the meaning set out in Section 1.
Personal Data	means the information relating to an identified (or identifiable) individual, and collected, received, generated or otherwise obtained or processed by Philips in relation to or in the context of the Agreement or the relationship with Customer.
Philips	has the meaning set out in Section 1. For the purpose of this PDPA, Philips will be the Data Processor.
Section	means a section in this PDPA.
Collaboration Suite Agreement	– has the meaning set out in Section 2.
Services	– means the services to be provided by Philips to the Customer under the Deployed Solution Agreement and which require the Processing of Personal Data by Philips.
Sensitive Data	– means Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
Sub-Processor	means any third party, including sub-contractor as defined in the Master Agreement, that processes Personal Data under the instruction or supervision of Philips but that does not fall under the direct authority of Philips.

Annex 2 (PDPA) – Description of Security Measures

Philips Product & Services Security Policy Framework

Products and Product-related Services, such as Connected / Remote Service Infrastructure, Hosted Solutions and platforms, Customer services applications are vital assets, which are essential to Philips business and its customers. The Philips Product & Services Security Policy Framework contains a set of defined policies, standards, guidelines, procedures, and processes that ensures Security by Design and operational excellence. Each Philips product or service integrates the appropriate controls applicable for the intended use and management of the product or service.

Data and System Security

Appropriate technical and organizational security controls are implemented in line with internal Philips information security standards to ensure a level of security appropriate to the risk, taking into account the costs of implementation, the nature, scope and context of data processing and risks for the product or service. The following provides an overview of those policies, procedures and processes that comprise the technical, physical and organizational measures employed by Philips to protect Business Customer's Individuals Personal Data (BCI Data) from misuse or accidental, unlawful or unauthorized destruction, loss, alteration, disclosure, acquisition or access.

Human Resources Security

All Philips Staff with access to BCI Data are trained on roles and responsibilities applicable to the extent necessary to perform their job functions and processing according to the Philips General Business Principals. Philips imposes confidentiality obligations on Philips Staff that has access to BCI Data.

Risk Assessment and Management

Philips maintains a comprehensive risk management strategy that includes a holistic risk assessment process to prevent, mitigate, and/or remediate security risks and periodically check the level of security throughout the lifecycle of the product or service. Philips has established categorized security requirements (e.g. access controls, encryption, system hardening, patching requirements, malware protection, vulnerability management, code reviews, security training and monitoring) to ensure adequate mitigation and protection of system and information assets.

Access Controls

Role based access controls exist to restrict access to systems and data to management authorized individuals for valid business purposes only. Philips Staff and Third Parties processing BCI Data are trained and accountable for the protection of that information and the applicable assets per defined roles.

Business Continuity

Product Security requirements ensure the ongoing integrity, availability and resilience of processing systems and services to ensure that Philips products and services have adequate backup and restore procedures in line with the system criticality. Systems are able to continue operations at a minimum level and restore full functionality in the event of a major disruption of operations. Contingency plans and procedures are tested and verified.

Activity Logging

Philips Security & Privacy Policies controls require appropriate logging and monitoring to enable recording of IT security-relevant actions and access to systems. Security control features, service levels and management requirements of all network services must be identified and included in any network services agreement, whether these services are provided in-house or outsourced. Also, formal procedures are required for authorizing access to systems or applications, and all user access rights and privileges must be reviewed at regular intervals.

Security Incidents and Breach Notification

All employees, contractors, and third party users of information systems and services are required to note and report any observed or suspected security weaknesses in systems or services, through management channels, to Philips PSIRT (Product Security Incident Response Team) for investigation and follow-up, as appropriate. Product & Services Security incidents that involve personal data or that may have privacy implications shall also be reported to the applicable Privacy Officer.

Philips shall notify the Business Customer of a Data Security Breach as required by law or as soon as reasonably possible, following discovery of such breach, unless a law enforcement official or supervisory authority determines that notification would impede a (criminal) investigation or cause damage to national security or the trust in the relevant industry sector. In this case, notification shall be delayed as instructed by such law enforcement official or supervisory authority. Philips shall respond promptly to inquiries of the Business Customer relating to such Data Security Breach.

Physical Security

Philips Product & Services Security Policy requires Philips management to identify those areas requiring specific level of physical security, and access to those areas is provided only to authorized persons for authorized purposes. Philips secured areas employ various physical security safeguards, including closed circuit television monitoring, use of security badges (identity controlled access) and security guards stationed at entry and exit points. Visitors may only be provided access where authorized and are to be supervised at all times.

Compliance

Philips has a standing Product & Services Security Office that regularly monitors the implemented security measures and implementation of new security requirements. Compliance with Philips Product & Services Security Policies is accomplished through annual training, periodic reviews of local and organization-wide policies and procedures, and audits.

Philips Remote Service Network

The Philips Remote Services operating environment implements security controls that meet the internationally recognized ISO 27001 information security management systems standard and is audited annually by an independent third party.