

Maintenance and Support Agreement

This Maintenance and Support Agreement is made and entered into by and between **Philips Electronics Nederland B.V.**, acting through its CareServant venture, having offices at High Tech Campus 27, 5656 AE Eindhoven, the Netherlands ("Philips"); and customer who is a purchaser of Philips software ("Customer") and is entered into as part of the sale of certain products identified in the quotation. This Maintenance and Support Agreement does not supersede or replace any terms of the quotation or sales agreement or any other document attached to the quotation.

Interpretation

Capitalized terms used herein shall have the meaning set forth in the Agreement, unless defined differently in this Clause I or elsewhere in this Maintenance and Support Agreement.

"Agreement" shall mean the General Customer Software License Agreement between Philips and Customer constituting an inherent part of the terms and conditions of sale attached to the quotation.

"Duration" shall mean the effective period of the Maintenance and Support Agreement as further specified in Article 9.

"Error" shall mean any verifiable and reproducible failure of the System to operate in accordance with the Functional Specifications on the Designated Hardware under conditions of normal use. Notwithstanding the foregoing, "Error" shall not include any such failure that is caused by: (i) the use or operation of the System with any other software or programming languages or in an environment or on hardware other than the Designated Hardware, (ii) Modifications to the System not made or approved by Philips.

"Error Correction" shall mean either (i) an Update, or (ii) a Single Error Correction.

"Fatal Errors" shall mean Errors totally blocking the functionality of the System, as a result of which the System substantially unusable.

"Helpdesk" shall mean the helpdesk identified under Exhibit B.

"Holidays" shall mean every official and/or national holiday in the country where the Helpdesk is located.

"Information Request" shall mean a request for information with respect to the System placed in accordance with Article 3.

"System" shall mean the components (including Licensed Software as referred to in the Software License Agreement) on which Philips offers maintenance services in the quotation.

"Customer's Authorized Support Engineers" shall mean Customer's employees identified as such in Exhibit C.

"Maintenance Services" shall mean the services specified in Article 4.

"Maintenance and Support Fees" shall mean the fees due by Customer to Philips in consideration of the Maintenance Services as set forth in the quotation and/or Exhibit A, hereto.

"Major Errors" shall mean Errors, which materially disable or materially and adversely affect part of the functionality of the System.

"Minor Errors" shall mean any Errors other than Fatal Errors and Major Errors.

"Modifications" shall mean any and all changes, including without limitation additions to or deletions from the System, modifications, reconfigurations, alterations, improvements, translations, transformations, derivative works, and/or enhancements of the System.

"Services" shall mean the Maintenance Services and the Support Services.



“**Specifications**” shall mean the specifications of the System as described in the quotation.

“**Starting Date**” shall mean the date of both Parties having signed this Maintenance and Support Agreement.

“**Support Request**” shall mean a request for Support placed by the Customer’s Authorized Support Engineers at the Help Desk.

“**Support Services**” shall mean the services specified in Article 3.

“**Update**” shall mean an improved version of the System or any part thereof, having the same Specifications – and not incremental additional capabilities or functionality – as the immediately preceding version of the System. An ‘Update’ shall include any version of the System identified as such by Philips.

“**Upgrade**” shall mean a version of the System or any part thereof having incremental additional capabilities or functionality as compared to the immediately preceding version of the System. An ‘Upgrade’ shall include any version of the System identified as such by Philips.

“**Working Day**” shall mean each day of the week, except for Saturdays and Sundays and Holidays.

“**Working Hours**” shall mean as indicated in Exhibit B.

2 **Scope**

2.1 Provision of Services

Subject to customer’s payment of the Support and Maintenance Fee, Philips shall use reasonable commercial efforts to provide Customer, during the Duration thereof with the Maintenance Services and Support Services as regards the System, in accordance with the terms and conditions of this Maintenance and Support Agreement, it being understood that Philips shall only provide its services hereunder in respect of the current product release and one prior product release (a “Supported Release”). A prior product release is the most recent product release with a lower release number than the current product release. Philips’s Maintenance Services commitments will not apply if Customer is not using a Supported Release.

2.2 Exclusions

Philips will not be required to provide any Support Services to Customer under this Maintenance and Support Agreement for parts of the System that have been modified or altered or is used otherwise than specified by Philips in the Specifications, for any hardware or software not supplied by Philips (or any failures or delays related thereto), nor for Errors resulting from any breach of this Agreement. No hardware related items are handled by Philips, unless as explicitly otherwise agreed in writing between the Parties. This Maintenance and Support Agreement shall in no way be construed or interpreted as an obligation for Philips to provide any Upgrades.

2.3 Languages

The language in which the Maintenance and Support Services may be requested and will be provided is Dutch or English, unless otherwise agreed in writing.

3 **Support Services**

3.1 Support

During Working Hours Philips shall make available a Helpdesk via telephone, fax and/or networking services. The contact details of this Helpdesk are specified in Exhibit B. Philips’ Helpdesk shall offer Customer a point of entry for request with respect to: (i) Errors in the System; (ii) registration, identification and verification of such Errors; (iii) provision of assistance in remedying such Errors; and/or (iv) clarification of documentation and Information Requests.



3.2 Placing Calls

All Support and Information Requests must be placed by Customer's Authorized Support Engineers by telephone or by telefax or e-mail sent to the Helpdesk in accordance with the contact details specified in Exhibit B, unless specified otherwise in writing by, or on behalf of, Philips. If a Support or Information Request is placed by telephone, Customer's Authorized Support Engineer shall send a confirmation of such request to the Helpdesk by telefax or e-mail ultimately within twelve (12) hours thereafter specifying the nature of such request.

3.3 Classification of Requests

The Helpdesk shall analyze all requests and shall divide these into: (I) requests requesting the clarification of documentation and Information Requests; and (II) Support Requests, which latter requests will subsequently be broken down into Support Requests: (i) related to Errors in the System; and (ii) not related to Errors in the System.

3.4 Requests for clarification of documentation and Information Requests

The Helpdesk shall use commercially reasonable efforts to address all requests for clarification of documentation and Information Requests on a basis mutually agreed by the Parties.

3.5 Support Requests not related to Errors in the System

The Helpdesk shall forthwith inform Customer if the Error, for which Support Request was placed, does not relate to the System. Such request shall not require any further follow up from the Helpdesk.

3.6 Support Requests related to Errors in the System

If the Error, for which the Support Request was placed, does relate – so to the Helpdesk's sole discretion – to the System, the Helpdesk shall: (i) classify such Error as Fatal Error, Major Error, or Minor Error and (ii) provide Customer with subsequent follow up as set forth in Exhibit D.

3.7 Communications to Customer

All Philips' Helpdesk's communications to Customer will be addressed to Customer's Authorized Support Engineers in accordance with the contact details specified in Exhibit B. These communications may be provided by telephone, e-mail, fax or any other means reasonably deemed appropriate.

3.8 System Access

In order to be able to deliver the Maintenance and Support Services contemplated herein, customer must provide Philips with 24x7 direct broadband internet access to all server hardware. Additionally, the customer must provide Philips with administrator access to all Products that exist on the server. Customer will provide Philips with 24x7 contact information for a system administrator in case on-site assistance is necessary to resolve a critical issue.

4. **Maintenance Services**

For the Duration of this Maintenance and Support , Philips shall use commercially reasonable efforts to provide Customer with Updates and Error Corrections for Errors which Errors have been reported to the Helpdesk by Customer's Authorized Support Engineers in accordance with target response & repair times set forth on Exhibit D; and (ii) allocate sufficient, adequately trained staff in connection therewith. Such Updates and Error Corrections may be provided by: email, verbal instructions or any other means mutually agreed upon. Any verbal instructions will be subsequently confirmed in writing. All Updates and Error Corrections provided to Customer shall be subject to the terms and conditions of this Agreement, unless and to the extent explicitly specified otherwise in writing by Philips.



5. Further Obligations of Customer

5.1 Self Examination

Prior to placing any request reporting an Error with Philips' Helpdesk, Customer shall examine whether such Error is reproducible, whether such Error relates to any System components and, if so, whether such Error may be (partially) related to any third party owned software components within the System.

5.2 Providing Supporting Information

All requests reporting an Error must be accompanied by adequate supporting information, so to Philips' Helpdesk's reasonable satisfaction. As a minimum this information shall comprise: (i) a detailed description of the Error; (ii) the circumstances under which the Error occurred; and (iii) sufficient additional information in order to enable Philips' Helpdesk to reproduce, classify and correct the Error. Customer shall also provide Philips Helpdesk with the details on the operating system used when the Error was identified in order to reproduce, classify and correct the Error.

5.3 Installation

Customer shall have the sole discretion whether or not to install any Error Corrections provided hereunder. Without prejudice to the aforementioned, Customer shall: (i) install such Error Corrections only in accordance with the license (grant) under the Agreement; and (ii) validate correct operation of such installed Error Corrections.

6. License Grant and Intellectual Property Rights

6.1 Licence Grant

Philips' delivery to Customer of any Updates and/or Error Corrections hereunder shall constitute Philips' grant to Customer, and Customer's acceptance, of a license to use such Updates and/or Error Corrections under the same terms and conditions as set forth in the Agreement. Such Updates and/or Error Corrections shall form part of the System and the software contained therein and Customer's use thereof shall be subject to the conditions and restrictions set forth in the Agreement.

6.2 Survival

For the avoidance of doubt it is hereby acknowledged and agreed by the Parties that the license grant under Article 6.1 above shall terminate in accordance with the expiration or termination provisions of the software license agreement which constitutes a part of the these terms and conditions.

6.3 Intellectual Property Rights

Any and all intellectual property rights in the Updates and Error Corrections shall remain solely with Philips.

7. Maintenance and Support Fees

In consideration of the Support and Maintenance Services (to be) provided under this Support and Maintenance Agreement, Customer shall pay to Philips the Maintenance and Support Fee as set forth in the quotation and/or Exhibit A. All amounts due under this Support and Maintenance Agreement shall be paid as set forth in the terms and conditions of sale attached to the quotation.

8. Warranty, Indemnification and Limitation of Liability



For the avoidance of doubt, the Parties acknowledge and agree that Clauses on “Warranty” “Indemnification” of the Agreement shall apply *mutatis mutandis* to the parties’ undertakings under this Maintenance and Support Agreement.

9. Duration and Termination

9.1 Duration

This Maintenance and Support Agreement is effective as of the date the customer starts to use the System, and shall remain in effect for a period of time indicated in Exhibit A, after the date of the final acceptance of the Product (as defined in the Conditions of Sale) subject to Article 10 of the General Terms and Conditions of Sale. .

9.2 Termination by Philips

Without prejudice to any rights or remedies of Philips, Philips may, by written notice to Customer, terminate with immediate effect this Maintenance and Support Agreement, without any liability whatsoever, if:

- (a) Customer fails to make any applicable payment under this Maintenance and Support Agreement to Philips when due; or
- (b) Customer breaches or fails to perform any of the terms or conditions of this Maintenance and Support Agreement and:
 - i. such breach or failure is not capable of remedy; or
 - ii. such breach or failure, if capable of remedy, is not remedied within 30 (thirty) days after written notice from Philips requiring such breach or failure to be remedied; or
 - iii. Customer has otherwise come in default;
unless such breach or failure, having regard to its nature or minor importance, does not justify this termination with its consequences; or
- (c) a voluntary or involuntary petition in bankruptcy or winding up is filed against Customer, any proceedings in insolvency or bankruptcy (including the Customer) are instituted against Customer, a trustee or receiver is appointed over Customer, or any assignment is made for the benefit of creditors of Customer.

9.4 Termination by Customer

Without prejudice to any rights or remedies of Customer, Customer may, by written notice to Philips, terminate with immediate effect this Maintenance and Support Agreement, without any liability whatsoever, if:

- (a) Philips breaches or fails to perform any of the terms or conditions of this Maintenance and Support Agreement and:
 - i. such breach or failure is not capable of remedy; or
 - ii. such breach or failure, if capable of remedy, is not remedied within 30 (thirty) days after written notice from Customer requiring such breach or failure to be remedied; or
 - iii. Philips has otherwise come in default;
unless such breach or failure, having regard to its nature or minor importance, does not justify this termination with its consequences; or
- (b) a voluntary or involuntary petition in bankruptcy or winding up is filed against Philips, any proceedings in insolvency or bankruptcy (including reorganization) are instituted against Philips, a trustee or receiver is appointed over Customer, or any assignment is made for the benefit of creditors of Philips.



10. **Miscellaneous**

Clause "Miscellaneous" of the Agreement shall apply mutatis mutandis to this Maintenance and Support Agreement.

11. **Privacy**

The Parties hereby acknowledge that while providing the Maintenance and Support Services, Philips has access to certain server computers of Customer on which "Personal Data" is stored. Personal Data means any information in any form relating to an identified or identifiable individual. Philips will process such Personal Data only to the extent necessary to fulfill its obligations under this Agreement. Customer represents and warrants that in accordance with all the applicable laws and regulations, it has the right and authority to allow Philips to process such Personal Data as described in this Agreement.

The above authorization serves as a consent granted by Customer to Philips to have access to the IT system of Customer. Customer shall inform Philips immediately in case Customer becomes unauthorized to grant such consent, in which case Philips and the Customer will engage in good faith discussions to define how Philips can provide Maintenance and Support Services.



Exhibit A

I. Maintenance and Support Fees

Category	Annual Fee (€)
a) Maintenance Services and Support Services.	[Enter amount here]
b) On-site support services excluding on-site supplementary charges: 1- Air fare: actual cost based on economy class (receipts will be provided); and 2- Lodging, meals and ground transportation: [EUR 150] (hundred fifty euros) per day.	
c) Other services including, but not limited to: – configuration changes – content changes – interoperability testing; – performance optimizations; – porting; – integration; and – development.	Not included, but to be agreed on time-material basis Hourly support fee of EUR 125 (onehundred twentyfive euros), excluding on-site supplementary charges (b1 + b2)

2. Payment conditions

Payment is due annually at the beginning of every calendar year.

Subject to Article 9.1, the duration of the agreement is a period of [5 to7] years.

. When initially only part of the displays are in use the costs of the support agreement will be adapted accordingly.

The payment term is as defined in the “Conditions of Sale”.



Exhibit B

Contact Details Helpdesk

The Philips CareServant European Helpdesk can be reached as follows:

- Email: servicedesk@careservant.com
- Telephone number: +31 40-230 9818.
- Self service portal: details to be provided
- Working hours are between 8.30 AM - 17 30. AM (CET).



Exhibit C

Contact persons and contact details Customer's Authorized Support Engineers

[to be added by customer...]



Exhibit D

Target response & repair times

<i>Error classification</i>	<i>Analysis</i>	<i>Target response & repair times</i>
Fatal Error. Progress will be reported on a daily basis until the Error Correction is provided.	Support Requests will be analysed within one (1) Working Day. Then an analysis report will be delivered	Philips will respond to the support request within one hour during helpdesk opening hours. Philips within four hours during helpdesk opening hours to take measures needed to provide an acceptable solution (work-around or Error Correction) as soon as reasonably possible.
Major Error: Progress will be reported on a weekly basis until the Error Correction is provided	Support Requests will be analysed within two (2) Working Days. Then an analysis report will be delivered	Philips will respond to the support request within four hours during helpdesk opening hours. Philips to reasonably provide an acceptable solution (work-around or Error Correction) within eight (3) Working Days after analysis
Minor Error: Progress will be reported on a monthly basis and an Error Correction will be provided at Philips' discretion	Support Requests will be analysed within eight (8) Working Days. Then an analysis report will be delivered	Philips will respond to the support request within two working days. Philips to provide Error Correction in next release

