North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

November 5, 2013

Catharine W. Cummer, Regulatory Counsel, Strategic Planning
Duke University Health System
3100 Tower Blvd, Suite 1300
Durham NC 27707

Exempt from Review - Replacement Equipment

Facility:	Duke University Health System d/b/a Duke University Hospital
Project Description:	Replacement of cardiac catheterization equipment
County:	Durham
FID #:	943138

Dear Ms. Cummer:

In response to your letter of October 14, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(7). Therefore, you may proceed to acquire, without a certificate of need, the Philips Allura Xper FD20 cardiac catheterization equipment to replace the existing Philips Allura 9F cardiac catheterization equipment [Serial # S01H016455-000001]. This determination is based on your representations that the existing unit will be removed from North Carolina and will not be used again in the State without first obtaining a certificate of need. Further please be advised that as soon as the replacement equipment is acquired, you must provide the CON Section and the Medical Facilities Planning Section with the serial number of the new equipment to update the inventory, if not already provided.

Moreover, you need to contact the Construction and Acute and Home Care Licensure and Certification Section to determine if they have any requirements for development of the proposed project.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Michael J. McKillip
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Construction Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR

Certificate of Need Section
www.ncdhhs.gov
Telephone: 919-855-3873 • Fax: 919-733-8139
Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603
Mailing Address: 2704 Mail Service Center •Raleigh, NC 27699-2704
An Equal Opportunity/ Affirmative Action Employer

Duke University Health System

Catharine W. Cummer
Regulatory Counsel, Strategic Planning

October 14, 2013

Via Electronic Mail

Mr. Michael McKillip
Certificate of Need Section
Division of Health Service Regulation
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: Notice of Exempt Acquisition of Replacement Equipment

Dear Mr. McKillip:

On behalf of Duke University Health System, I am writing to notify you of the proposed acquisition of replacement cardiac catheterization equipment at Duke University Hospital. Both the existing and replacement equipment are monoplane cardiac catheterization equipment. The original equipment was purchased in 2002 and is currently used on a mobile cardiac catheterization lab. A completed equipment comparison form and capital cost form is enclosed as Exhibit A. Quotes for the new equipment and accessories are enclosed as Exhibit B. The total capital cost for the replacement equipment is $1,829,400.

We have previously requested and received confirmation that after replacement of this equipment, Duke may install the new equipment in one of the new operating rooms under development in Project J-8030-07. The correspondence detailing this proposal is enclosed as Exhibit C.

The existing equipment is currently in use on a mobile route, but will be removed from service in the state upon installation of the replacement equipment, unless Duke first receives authorization from the CON Section allowing other disposition of the equipment.

3100 Tower Blvd Suite 1300 * Durham, NC 27707 * tel (919) 668-0857 * catharine.cummer@duke.edu

Mr. Michael McKillip
October 14, 2013

It is our understanding that this replacement is exempt from certificate of need review as the exempt acquisition of replacement equipment. We would appreciate your confirmation of this understanding. Thank you for your attention to this request. Should you have any questions, please let me know.

Very truly yours,

Catharine W. Cummer

Enclosures

3100 Tower Blvd Suite 1300 * Durham, NC 27707 * tel (919) 668-0857 * catharine.cummer@duke.edu

EQUIPMENT COMPARISON – DUKE UNIVERSITY HOSPITAL CARDIAC CATHETERIZATION LAB

	EXISTING EQUIPMENT	REPLACEMENT EQUIPMENT
Type of Equipment (List Each Component)	Cardiac Catheterization Equipment	Cardiac Catheterization Equipment
Manufacturer of Equipment	Philips Medical System	Philips Healthcare
Tesla Rating for MRIs	NA	NA
Model Number	Integris Allura 9F	Allura Xper FD20 with Xper Flex Cardio
Serial Number	S01H016455-000001	
Provider's Method of Identifying Equipment	Mobile Cath Lab	Hybrid OR 2
Specify if Mobile or Fixed	Mobile	Fixed
Mobile Trailer Serial Number/VIN #	VIN # 1LH142UH121012156	N/A (trailer will not be replaced)
Mobile Tractor Serial Number/VIN #		
Date of Acquisition of Each Component	2002	
Does Provider Hold Title to Equipment or Have a Capital Lease?	Title	Title
Specify if Equipment Was/Is New or Used When Acquired	New	New
Total Capital Cost of Project (Including Construction, etc.) <Use Attached Form>	N/A	$1,829,400*
Total Cost of Equipment	Approximately $1.8 million	$1,829,400
Fair Market Value of Equipment		$1,829,400
Net Purchase Price of Equipment		$1,829,400
Locations Where Operated	Mobile; current host sites include Maria Parham Hospital, Community Memorial Healthcenter	Duke University Hospital
Number Days In Use/To be Used in N.C. Per Year	365	365
Percent of Change in Patient Charges (by Procedure)	NA	0
Percent of Change in Per Procedure Operating Expenses (by Procedure)	NA	0 (excludes depreciation)
Type of Procedures Currently Performed on Existing Equipment	Cardiac catheterization	NA
Type of Procedures New Equipment is Capable of Performing	NA	Cardiac catheterization

***Per previous correspondence, the replacement equipment will be installed in an existing operating room; operating room construction and upfit costs are included in Project J-8030-07.**

PROPOSED TOTAL CAPITAL COST OF PROJECT

Project Name: REPLACEMENT OF MOBILE CARDIAC CATHETERIZATION EQUIPMENT
Provider/Company: DUKE UNIVERSITY HOSPITAL

A. **Site Costs**			
(1) Full purchase price of land		$_____	
Acres _____ Price per Acre $_____			
(2) Closing costs	$_____		
(3) Site Inspection and Survey		$_____	
(4) Legal fees and subsoil investigation		$_____	
(5) Site Preparation Costs			
Soil Borings.....	$_____		
Clearing-Earthwork...	$_____		
Fine Grade For Slab...	$_____		
Roads-Paving.....	$_____		
Concrete Sidewalks....	$_____		
Water and Sewer.....	$_____		
Footing Excavation....	$_____		
Footing Backfill.....	$_____		
Termite Treatment....	$_____		
Other (Specify).....	$_____		
Sub-Total Site Preparation Costs		$_____	
(6) Other (Specify)		$_____	
(7) **Sub-Total Site Costs**			$_____
B. **Construction Contract**			
(8) Cost of Materials			
General Requirements	$_____		
Concrete/Masonry	$_____		
Woods/Doors & Windows/Finishes	$_____		
Thermal & Moisture Protection	$_____		
Equipment/Specialty Items	$_____		
Mechanical/Electrical	$_____		
Other (Specify)	$_____		
Sub-Total Cost of Materials.....		$_____	
(9) Cost of Labor.....		$_____	
(10) Other (Specify).....		$_____	
(11) **Sub-Total Construction Contract**			$_____
C. **Miscellaneous Project Costs**			
(12) Building Purchase.....		$_____	
(13) Fixed Equipment Purchase/Lease		$ 1,829,400	
(14) Movable Equipment Purchase/Lease		$_____	
(15) Furniture		$_____	
(16) Landscaping		$_____	
(17) Consultant Fees			
Architect and Engineering Fees	$_____		
Legal Fees.....	$_____		
Market Analysis.....	$_____		
Other (Specify).....	$_____		
Other (Specify).....	$_____		
Sub-Total Consultant Fees.....		$_____	
(18) Financing Costs (e.g. Bond, Loan, etc.).		$_____	
(19) Interest During Construction.		$_____	
(20) Other (Specify)		$_____	
(21) **Sub-Total Miscellaneous..**			$ 1,829,400
(22) **Total Capital Cost of Project** (Sum A-C above)			$ 1,829,400

I certify that, to the best of my knowledge, the costs of the proposed project named above are complete and correct.

_____ Date Certified: _____
(Signature of Licensed Architect or Engineer)

I assure that, to the best of my knowledge, the above costs for the proposed project are complete and correct and that it is my intent to carry out the proposed project as described.

_____ Date Signed: 10.9.13
(Signature and Title of Officer Authorized to Represent Provider/Company)

PHILIPS HEALTHCARE
A division of Philips Electronics North America Corporation
22100 Bothell Everett Highway
P.O. Box 3003
Bothell, Washington 98041-3003

PHILIPS

Quotation #: 1-YYSHH0	**Rev:** 1	**Effective From:** 08-Mar-13	**To:** 22-Apr-13

Presented To:
DUKE UNIVERSITY MEDICAL CENTER
2301 ERWIN RD
DURHAM, NC 27710

Tel:

Alternate Address:

Presented By:
Chris Mason — **Tel:** (615) 517-6955
Account Manager — **Fax:**

Terry West — **Tel:**
Regional Manager — **Fax:**

Date Printed: 08-Mar-13

Submit Orders To:
22100 BOTHELL EVERETT HWY
BOTHELL WA 98041
Tel:
Fax:(425) 458-0390

IMPORTANT NOTICE: Health care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).

Ex B

Quote Solution Summary

Line #	Product	Qty	Price
	100215 Allura Xper FD20	1	$1,670,140.50
		Equipment Total:	$1,670,140.50

Solution Summary Detail

Product	Qty	Each	Monthly	Price
100215 Allura Xper FD20	1	$1,670,140.50		$1,670,140.50

Buying Group: NO CONTRACT **Contract #:** NONE

Addt'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Payment Terms: 10% With Signed Acceptance of the Quotation, 70% Upon Delivery of Major Components, 20% Due When the Product is Available for First Patient Use, Net due 10 days from date of invoice

100215 Allura Xper FD20

System Type: New
Freight Terms: FOB Destination
Warranty Terms: Part numbers beginning with two (2) asterisks (**) are covered by a System 12 Months Warranty. All other part numbers are third (3rd) party items.
Special Notations: Contingencies must be removed 120 days before scheduled shipment to assure delivery on specified date.
Additional Terms: Any rigging costs are the responsibility of the Purchaser.

Line #	Part #	Description	Qty
1	**NNAE312	Allura FD20C Rel. 8.1 FlexMove	1
2	**FCV0629	Addl sets of documentation	1
3	**FCV0608	Addl 21" Color Monitor for ER	1
4	**NCVB171	3D-RA R.6	1
5	**NCVA788	MultiSwitch.	1
6	**NCVA030	2nd Reference Monitor in ER (18" LCD)	1
7	**NCVA089	RIS / CIS DICOM interface	1
8	**NCVA088	Standard Line Rate Video Output	1
9	**NCVA092	Lab Reporting	1
10	**NCVA080	Automatic Position Control (APC)	1
11	**NCVA801	Table APC	1
12	**NCVA695	FD Rotational Angio	1
13	**NCVA694	Subtracted Bolus Chase	1
14	**NCVA258	CO2 View Trace Software	1
15	**NCVA864	Storage extension	1
16	**NCVA693	FD Dual Fluoro	1
17	**NCVA672	FD SmartMask	1
18	**NCVA121	FULL AUTOCAL	1
19	**NCVA786	Vascular Quant.Sw pkg(Xper)	1
20	**NCVA097	Cath Arm Support	1
21	**NCVA098	Pulse Cath Arm Support	1
22	**NCVA101	Peripheral X-ray Filter	1
23	**NCVA783	Pivot for table base.	1

100215 Allura Xper FD20			
Line #	Part #	Description	Qty
24	**NCVA791	Xper Table Tilt	1
25	**NCVB882	Cradle extension	1
26	**NCVB199	Table top brake kit for the Xper Table	1
27	**FCV0510	Long mattress cardio	2
28	**FCV4894	Add.op-rail with cable ext.kit	1
29	**FCV0513	Add. OP rail (US version)	2
30	**NCVB878	Interventional Tools Hardware	1
31	**NCVA590	Real time image link	1
32	**NCVA116	3D RA Control for Xper Module	1
33	**NCVB168	3D Roadmap	1
34	**FCV0569	Coupling to Video Switching	1
35	**989801292099	CV Add OnSite Clin Educ 24h	4
36	**989801292102	CV Full Travel Pkg OffSite	2
37	**989801292383	Vasc Interventional Tools OffSite 20h	2
38	**989801292445	CV 16h to 20h Travel Pkg OffSite	2
39	**989801299994	XD9078 FLEXMOVEXYCEILINGSUSPENSION E-LEARNING	2
40	**980406190009	PIVOTING TABLE-MOUNTED RADIATION SHIELD	1
41	**989600213942	AD5 TO XPER TABLE ADAPT. PLATE	1
42	SP059B	Universal Power Supply	1
	Philips Power Solutions UPS for FD20 system.		
43	Third Party Item	Bariatric table extension	1
	Bariatric table extension for AD7 sqaure end table.		

NET PRICE $1,670,140.50

Buying Group: NO CONTRACT Contract #: NONE

Addt'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Price above does not include any applicable sales taxes.

The preliminary delivery request date for this equipment is:_____.

If you do not issue formal purchase orders indicate by initialing here_____.

Tax Status:

Taxable_____ Tax Exempt_____

If Exempt, please indicate the Exemption Certification Number:_____, and attach a copy of the certificate.

Delivery/Installation Address:

_____

_____

_____

Invoice Address:

_____

_____

_____

Contact Phone #:

_____

Contact Phone #:

_____

Purchaser approval as quoted:

_____

Date:

_____

Title:

_____

This quotation is signed and accepted by an authorized representative in acknowledgement of the system configuration, terms and conditions stated herein.

100215 Allura Xper FD20

OPTIONS

SELECTION OF ANY OPTION WILL INCREASE THE CONTRACT PRICE BY THE AMOUNT SHOWN IN THE PRICE COLUMN. OPTIONAL EQUIPMENT PRICING VALID ONLY IF PURCHASED IN CONJUNCTION WITH EQUIPMENT QUOTED.

Line #	Part #	Description	Qty	Each	Price	Initial
1	**NCVB618	HeartNavigator R1	1	$51,155.00	$51,155.00	_____
2	**NCVA197	Xper Pedestal	1	$13,877.50	$13,877.50	_____
3	**NCVA779	3rd Xper Module pr	1	$13,741.00	$13,741.00	_____
4	**NCVB167	MR/CT Roadmap	1	$27,072.50	$27,072.50	_____
5	**NCVA879	Xper CT R2	1	$81,744.00	$81,744.00	_____
6	**FCV0565	Personal Dose Meter(10 pieces)	1	$7,930.00	$7,930.00	_____
7	**FCV0566	Personal Dose Meter rack	2	$143.00	$286.00	_____
8	**FCV0567	Base Station Package	1	$17,849.00	$17,849.00	_____
9	**980406041009	Rad Shield w/ Arm (Contoured) 61X76	2	$3,822.00	$7,644.00	_____
10	**989801220026	Spectre Encrypted Wireless Footswitch	1	$10,627.50	$10,627.50	_____
11	**989801220080	Portegra 2 360 Ceiling Column	1	$3,705.00	$3,705.00	_____

Philips Standard Terms and Conditions of Sale

The products and services listed in the quotation are offered by Philips Healthcare, a division of Philips Electronics North America Corporation ("Philips") only under the terms and conditions described below.

1. Price; Taxes. The purchase price stated in the quotation does not include applicable sales, excise, use, or other taxes in effect or later levied. Customer shall provide Philips with an appropriate exemption certificate reasonably in advance of the date the product is available for delivery otherwise, Philips shall invoice Customer for those taxes, and Customer shall pay those taxes in accordance with the terms of the invoice.

2. Cancellation. Philips' cancellation policies are set forth in the applicable schedule attached to these Terms and Conditions of Sale.

3. Payment Terms.
3.1 Unless otherwise specified in the quotation, Philips will invoice Customer, and Customer will immediately pay such invoice on receipt for each product in accordance with the payment terms set forth in the applicable schedule attached to these Terms and Conditions of Sale:
3.2 Orders are subject to Philips' on-going credit review and approval.
3.3 Customer shall pay interest on any amount not paid when due at the maximum rate permitted by applicable law. If Customer fails to pay any amount when due, in addition to any other rights or remedies available to Philips at law or in equity, Philips may discontinue the performance of services, discontinue the delivery of the product, or deduct the unpaid amount from any amounts otherwise owed to Customer by Philips under any agreement with Customer. In any action initiated to enforce the terms of the quotation following a Customer default or product cancellation under an order arising from the quotation, Philips shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' fees, in connection with such action.
3.4 Credit Card. Philips, at its discretion, will accept a credit card for payment on orders with a net value of $50,000 or less.

4. Trade -In. If Customer will be trading-in any equipment ("Trade-In"), then:
4.1 Customer represents and warrants that Customer has good and marketable title to such Trade-In;
4.2 Title to the Trade-In shall pass from Customer to Philips upon Philips making the new equipment available for first patient use. Removal of the Trade-In from Customer's site shall occur no later than the date Philips makes the new product available for first patient use, unless otherwise agreed in writing between Philips and the Customer; and
4.3 Notwithstanding anything to the contrary in any Business Associate Addendum ("BAA"), Customer represents and warrants that Customer has removed or de-identified all Protected Health Information ("PHI") from the Trade-In equipment as of the date the equipment is removed. To the extent Customer has not done so, Customer agrees to reimburse Philips for any out-of-pocket costs Philips incurs to remove or de-identify PHI from the Trade-In.
4.4 If (a) the condition of the Trade-In is not substantially the same when Philips removes the Trade-In (ordinary wear and tear excepted) as it was when Philips quoted the Trade-In value; or (b) Customer delays the removal of the Trade-In, then Philips may reduce the price quoted for such Trade-In or cancel the Trade-In and Customer will pay the adjustment amount within thirty (30) days of receipt of invoice.
4.5 If Philips does not receive possession of the Trade-In, Philips will charge Customer, and Customer will pay within thirty (30) days of receipt of invoice, the amount of the Trade-In allowance.
4.6 Evidence that Customer intends to trade in an asset as part of the purchase or lease of any product(s) shall be in the form of, but not limited to: (a) receiving a trade in quote and/or authorization from Philips on the value of the asset to be traded in; (b) providing Philips with serial numbers of assets to be traded in; and/or, (c) providing Philips with a de-installation date to remove an existing asset in order to install Philips quoted equipment.

5. Leases. If Customer desires to convert the purchase of any product to a lease, Customer will arrange for the lease agreement and all other related documentation to be reviewed and approved by Philips not later than ninety (90) days prior to the date of the availability for delivery of major components of the product. The Customer is responsible for converting the transaction to a lease, and is required to secure the leasing company's approval of all of these Terms and Conditions of Sale. No product will be delivered to the Customer until Philips has received copies of the fully executed lease documents and has approved the same.

6. Security Interest. Customer hereby grants to Philips a purchase money security interest in the products until all payments have been made. Customer shall sign any financing statements or other documents necessary to perfect Philips' security interests in the products. Where permitted by applicable law, Customer's signature on the quotation or on a purchase order issued as a result of the quotation gives Philips the right to sign on Customer's behalf and file any financing statement or other documents to perfect Philips' security interest in the product.

7. Shipment and Risk of Loss.
7.1 The applicable schedule attached to these Terms and Conditions of Sale shall apply for delivery.
7.2 Title to any product (excluding software), and the risk of loss or damage to any product shall pass to the Customer F.O.B. destination. Customer shall obtain and pay for insurance covering such risks at destination.

8. Installation, Site Preparation, Remote Services.
8.1 **Installation.** Customer shall provide Philips full and free access to the installation site and suitable and safe space for the storage of the products before installation. Customer shall advise Philips of conditions at or near the site, including any hazardous materials, that could adversely affect the installation or pose a health or safety risk to Philips' personnel, and shall ensure that those conditions are corrected and hazardous materials removed, and that the site is fully prepared and available to Philips before installation work begins. Customer shall ensure, at no charge to Philips, that there are no obstacles preventing Philips from moving the product from the entrance of the Customer's premises to the installation site. Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, and restoration work. The products will be installed during normal working hours. Philips will unpack the product, construct applicable pads (if required for certain products), connect the product to a safety switch or breaker to be installed by the Customer, and calibrate and test the product. If local labor conditions, including but not limited to a requirement to utilize union labor, require the use of non-Philips employees to participate in the installation of the product, then such participation of non-Philips employees shall be at Customer's expense. In such case, Philips will provide engineering supervision during the installation.

8.2 **Site Preparation.** Except where Philips has agreed in writing to provide construction services for a fee pursuant to a construction agreement and scope of work signed by Customer, Customer shall be responsible, at its expense, for the preparation of the installation site where the product will be installed including any required structural alterations. Customer shall provide any and all plumbing, carpentry work, conduit, wiring including communications and/or computer wiring, network equipment, power supply, surge suppression and power conditioning (except to the extent they are expressly included in the quotation), fire protection and environmental controls, ground fault and isolation system, and other fixtures and utilities required to properly attach, install, and use the product. Site preparation shall be in compliance with all safety, electrical, RF or magnetic shielding and acoustical suppression and building codes relevant to the product and its installation and use. The sufficiency of any installation site plans shall be the responsibility of Customer. Customer, at its expense, shall obtain all permits and licenses required by federal, state, or local authorities in connection with the installation and operation of the product, including any certificate of need and zoning variances. PHILIPS MAKES NO WARRANTY AND ASSUMES NO LIABILITY FOR THE FITNESS OR ADEQUACY OF THE SITE IN WHICH THE PRODUCT IS TO BE INSTALLED OR USED. CUSTOMER INDEMNIFIES PHILIPS AGAINST ANY CLAIMS, INCLUDING SUBROGATION CLAIMS, ARISING FROM CUSTOMER'S SITE PREPARATION RESPONSIBILITIES.

8.3 **Remote Services Network ("RSN").** Customer will (a) provide Philips with a secure location at Customer's premises to store one Philips RSN router (or a Customer-owned router acceptable to Philips at Customer's option) for connection to the equipment and to Customer's network; and (b) at all times during the warranty period provide Philips with full and free access to the router and a dedicated broadband Internet access node, including but not limited to public and private interface access, suitable to establish a successful connection to the products through the Philips RSN and Customer's network for Philips' use in remote servicing of the product, remote assistance to personnel that operate the products, updating the products software, transmitting automated status notifications from the product and regular uploading of products data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into services). Customer's failure to provide such access at the scheduled time will constitute Customer's waiver of the scheduled planned maintenance service and will void support or warranty coverage of product malfunctions until such time as planned maintenance service is completed or RSN access is provided. Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the products.

9. Product Warranty.

9.1 If a separate product warranty page prints as part of this quotation, that product warranty applies to your purchase and is incorporated herein; otherwise Section 9.2-9.7 shall apply.

9.2 **Hardware/Systems.** Philips warrants to Customer that the Philips equipment (including its operating software) will perform in substantial compliance with its performance specifications in the documentation accompanying the products, for a period of 12 months beginning upon availability for first patient use.

9.3 **Stand-alone Licensed Software.** For a period of ninety (90) days from the date Philips makes Stand-alone Licensed Software available for first patient use, such Stand-alone Licensed Software shall substantially conform to the technical user manual that ships with the Stand-alone Licensed Software. "Stand-alone Licensed Software" means sales of Licensed Software without a contemporaneous purchase of a server for the Licensed Software. If Philips is not the installer of the Stand-alone Licensed Software, the foregoing warranty period shall commence upon shipment.

9.4 If the start of the installation is delayed for any reason beyond the control of Philips for more than thirty (30) days following the date that Philips notifies Customer that the major components of the product are available for delivery, the warranty period begins on the thirty-first (31st) day following that date.

9.5 Philips' sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips' option, to the repair or the replacement of the product or a portion thereof within thirty (30) days after receipt of written notice of such material breach from Customer ("Product Warranty Cure Period") or, upon expiration of the Product Warranty Cure Period, to a refund of a portion of the purchase price paid by the Customer, upon Customer's request. Any refund will be paid to the Customer when the product is returned to Philips. Warranty service outside of normal working hours (i.e, 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding Philips' observed holidays), will be subject to payment by Customer at Philips' standard service rates.

9.6 This warranty is subject to the following conditions: the product (a) is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips); (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips' written instructions and for the purpose for which the products were intended; and (c) is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the product; and Customer is to notify Philips immediately if the product at any time fails to meet its printed performance specifications. Philips' obligations under any product warranty do not apply to any product defects resulting from improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software (except DAT file changes) running in connection with the Licensed Software without prior validation approval by Philips; use or operation of the product other than in accordance with Philips' applicable product specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or viruses or similar software interference resulting from connection of the product to a network. Philips does not provide a warranty for any third party products furnished to Customer by Philips under the quotation; however, Philips shall use reasonable efforts to extend to Customer the third party warranty for the product. The obligations of Philips described herein and in the applicable product-specific warranty document are Philips' only obligations and Customer's sole and exclusive remedy for a breach of a product warranty.

9.7 THE WARRANTIES SET FORTH HEREIN AND IN PHILIPS' WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THE QUOTATION, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Philips may use refurbished parts in the manufacture of the products, which are subject to the same quality control procedures and warranties as for new products.

10. Philips Proprietary Service Materials. Any Philips maintenance or service software and documentation provided with the product and/or located at Customer's premises is intended solely to assist Philips and its authorized agents to install and to test the products or to assist Philips and its authorized agents to maintain and to service the products under warranty or a separate support agreement with Customer. Customer agrees to restrict access to such software and documentation to Philips' employees and those of Philips' authorized agents only and to permit Philips to remove its Proprietary Service Materials upon request.

11. Patent Infringement Claims.
11.1 Philips shall indemnify, defend, and hold harmless Customer against any new claim that a Philips Product provided in the quotation infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, provided that Customer: (a) provides Philips prompt written notice of the claim; (b) grants Philips full and complete information and assistance necessary for Philips to defend, settle, or avoid the claim; and (c) gives Philips sole control of the defense or settlement of the claim.
11.2 The provisions of this section shall not apply if the product is sold or transferred.
11.3 If (a) a Philips' Product is found or believed by Philips to infringe such a claim; or, (b) Customer has been enjoined from using the Philips Product pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option, (i) procure the right for Customer to use the product, (ii) replace or modify the product to avoid infringement, or (iii) refund to Customer a portion of the product purchase price upon the return of the original product. Philips shall have no obligation for any claim of infringement arising from: Philips' compliance with Customer's designs, specifications, or instructions; Philips' use of technical information or technology supplied by Customer; modifications to the product by Customer or its agents; use of the product other than in accordance with the product specifications or applicable written product instructions; use of the product with any other product; if infringement would have been avoided by the use of a current unaltered release of the products; or use of the Philips Product after Philips has advised Customer, in writing, to stop use of the Philips Product in view of the claimed infringement. Philips will not be liable for any claim where the damages sought are based directly or indirectly upon the quantity or value of products manufactured by means of the products purchased under this quotation, or based upon the amount of use of the product regardless of whether such claim alleges the product or its use infringes or contributes to the infringement of such claim. The terms in this section state Philips' entire obligation and liability for claims of infringement, and Customer's sole remedy in the event of a claim of infringement.

12. Limitation of Liability. THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM A PRODUCT, LICENSED SOFTWARE, AND/OR SERVICE IS LIMITED TO THE PRICE PAID HEREUNDER FOR THE PRODUCT, LICENSED SOFTWARE, OR SERVICE.
THIS LIMITATION SHALL NOT APPLY TO:
(a) THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT;
(b) CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY DAMAGE;
(c) OUT-OF-POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXENT SUCH NOTICES ARE CAUSED BY PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI; and,
(d) FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNATHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

13. DISCLAIMER. IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

14. Confidentiality. Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers and/or its patients, and the quotation and its terms, including the pricing terms under which Customer has agreed to purchase the products. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by the quotation. The obligation to maintain the confidentiality of such information shall not extend that (a) is or becomes generally available to the public without violation of this Agreement or any other obligation of confidentiality or (b) is lawfully obtained by the receiving Party from a third party without any breach of confidentiality or violation of law.

15. Compliance with Laws & Privacy.
15.1 Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to affirmative action, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).
15.2 In the course of providing project implementation related services and/or warranty services to Customer, hereunder, it may be necessary for Philips to have access to, view and/or download computer files from the products that might contain Personal Data. "Personal Data" means information relating to an individual, from which that individual can be directly or indirectly identified. Personal Data can include both personal health information (i.e. images, heart monitor data, and medical record number) and non-health information (i.e. date of birth, gender). Philips will process Personal Data only to the extent necessary to perform and/or fulfill its project implementation related service, warranty service and/or warranty obligations hereunder.
15.3 It is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act ("ARRA"). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.

16. Excluded Provider. Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal health care program, nor have they been convicted of any health care related crime for the products and services provided under this Agreement (an "Excluded Provider"). Philips shall promptly notify Customer when it becomes aware that Philips or any of its employees or subcontractors, providing services hereunder, have become an Excluded Provider whereupon Customer may terminate this order by express written notice for product and services not yet shipped or rendered.

17. General Terms. The following additional terms shall be applicable to the purchase of a product:
17.1 **Force Majeure.** Each party shall be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, acts of third parties, acts of any civil or military authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities.
17.2 **Bankruptcy.** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Philips may cancel any unfulfilled obligations, or suspend performance; however, Customer's financial obligations to Philips shall remain in effect.
17.3 **Assignment.** Customer may not assign any rights or obligations in connection with the transactions contemplated by the quotation without the prior written consent of Philips, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect.
17.4 **Export.** Customer shall assume sole responsibility for obtaining any required export authorizations in connection with Customer's export of the products from the country of delivery.
17.5 **Governing Law.** All transactions contemplated by the quotation shall be governed by the laws of the state where the equipment will be installed, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act ("UCITA"), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.
17.6 **Entire Agreement.** These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Philips' product-specific warranty document constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.
17.7 **Headings.** The headings in the quotation are intended for convenience only and shall not be used to interpret the quotation.
17.8 **Severability.** If any provision of the quotation is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.
17.9 **Notices.** Notices or other communications shall be in writing, and shall be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth in the quotation.
17.10 **Performance.** The failure of Customer or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting the terms and conditions of the quotation.
17.11 **Obligations.** Customer's obligations are independent of any other obligations the Customer may have under any other agreement, contract, or account with Philips. Customer will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Philips.
17.12 **Additional Terms.** The Product specific schedules listed below are incorporated herein as they apply to the equipment listed on the quotation and their additional terms shall apply solely to Customer's purchase of the products specified therein.
If any terms set forth in a schedule conflict with terms set forth in these Terms and Conditions of Sale, the terms set forth in the schedule shall govern:
(a) Schedule 1: Xcelera, Xper IM, Cardiovascular Information System (CVIS) and TraceMasterVue EKG Storage System (TMV) Products.

LICENSED SOFTWARE

1. License Grant.
1.1 Subject to any usage limitations for the Licensed Software set forth on the product description of the quotation, Philips grants to Customer a nonexclusive and non-transferable right and license to use the computer software package ("Licensed Software") in accordance with the terms of the quotation. The License shall continue for as long as Customer continues to own the product, except that Philips may terminate the License if Customer is in breach or default. Customer shall return the Licensed Software and any authorized copies thereof to Philips immediately upon expiration or termination of this License.
1.2 The License does not include any right to use the Licensed Software for purposes other than the operation of the product. Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Except as otherwise provided under section 1.6, Customer may not copy, reproduce, sell, assign, transfer, or sublicense the Licensed Software for any purpose without the prior written consent of Philips. Customer shall reproduce Philips' copyright notice or other identifying legends on such copies or reproductions. Customer will not (and will not allow any third party to) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover the product or Licensed Software by any means whatsoever.
1.3 The License shall not affect the exclusive ownership by Philips of the Licensed Software or of any trademarks, copyrights, patents, trade secrets, or other intellectual property rights of Philips (or any of Philips' suppliers) relating to the Licensed Software.
1.4 Customer agrees that only authorized officers, employees, and agents of Customer will use the Licensed Software or have access to the Licensed Software (or to any part thereof), and that none of Customer's officers, employees, or agents will disclose the Licensed Software, or any portion thereof, or permit the Licensed Software, or any portion thereof, to be used by any person or entity other than those entities identified on the quotation. Customer acknowledges that certain of Philips' rights may be derived from license agreements with third parties, and Customer agrees to preserve the confidentiality of information provided by Philips under such third party license agreements.
1.5 The Licensed Software shall be used only on the product(s) referenced in the quotation.
1.6 Customer may transfer the Licensed Software in connection with sale of the product to a healthcare provider who accepts all of the terms and conditions of this License; provided that Customer is not in breach or default of this License, the Terms and Conditions of Sale, or any payment obligation to Philips.

2. **Modifications**.
2.1 If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the products shall become null and void. If Customer or any of its officers, employees, or agents should devise any revisions, enhancements, additions, modifications, or improvements in the Licensed Software, Customer shall disclose them to Philips, and Philips shall have a non-exclusive royalty-free license to use and to sub-license them.
2.2 The Licensed Software is licensed to Customer on the basis that (i) Customer shall maintain the configuration of the products as they were originally designed and manufactured and (ii) the product includes only those subsystems and components certified by Philips. The Licensed Software may not perform as intended on systems modified by other than Philips or its authorized agents, or on systems which include subsystems or components not certified by Philips. Philips does not assume any responsibility or liability with respect to unauthorized modification or substitution of subsystems or components.

071612 (Rev I)

Schedule 1

Interventional X-Ray (iXR), Diagnostic X-Ray (DXR), Computed Tomography (CT), Magnetic Resonance (MR), Positron Emission Tomography (PET), Nuclear Medicine (NM), Radiation Oncology (PROS), Women's Healthcare (WHC), and Ultrasound (US) products (including Image Guided Intervention and Therapy (IGIT) Products)

1. **Payment Terms.**
Unless otherwise specified in the quotation, Philips will invoice Customer, and Customer will pay such invoice on receipt, as follows:
1.1 For Interventional X-Ray (iXR), Diagnostic X-Ray (DXR), Computed Tomography (CT), Magnetic Resonance (MR), Positron Emission Tomography (PET), Nuclear Medicine (NM), Radiation Oncology (PROS), and Women's Healthcare (WHC):
(a) 10% of the purchase price shall be due with Customer's acceptance of the quotation.
(b) 70% of the purchase price shall be due on delivery of the major components of the product. Product installation will not begin until Customer has paid this portion of the purchase price.
(c) 20% of the purchase price shall be due when the product is available for first patient use. Available for first patient use means the product has been installed and substantially meets Philips' published specifications.
1.2 For Ultrasound(US) products (including IGIT Products):
(a) 100% of the purchase price shall be due thirty (30) days from Philips' invoice date.
1.3 If the start of the installation is delayed for any reason beyond the control of Philips for more than thirty (30) days following the date that Philips notifies customer that the major components of the product are available for delivery, the unpaid portion of the purchase price shall be due on the thirty-first (31st) day following such date.

2. **Cancellation.** The quotation is subject to change or withdrawal prior to written acceptance by Customer. All purchase orders issued by Customer are subject to acceptance by Philips. If Customer cancels an order prior to product shipment, Customer shall pay a cancellation charge of fifteen percent (15%) of the net order price. Orders are non-cancellable for products shipped.

3. **Delivery.**
3.1 Philips will use reasonable efforts to ship the product to the Customer by: (a) by the mutually agreed upon shipment date; or (b) by the date stated in the quotation; or (c) as otherwise agreed in writing. Philips will ship the product according to Philips' standard commercial practices. Philips will deliver the equipment during normal working hours, 8:00 - 5:00 PM, in the time zone where the Customer is located. Philips may make partial shipments. Philips will pay shipping costs associated with product shipment.
3.2 Prior to the shipment of any product, Philips may change the construction or the design of the product without notice to the Customer so long as the function, footprint, and performance of the product are not substantially altered.
3.3 If Customer requests a delay in the date major components of the product are available for delivery, then Philips will place the product in storage and the unpaid portion of the purchase price shall be due. Customer will reimburse Philips for all storage fees incurred upon receipt of invoice.

4. **Additional Customer Installation Obligations for Magnetic Resonance.**
4.1 Customer shall provide any and all Site preparation and shall be in compliance with all RF or magnetic shielding and acoustical suppression and building codes relevant to the product and its installation and use.
4.2 Customer's contractor or Customer's architect is required to provide detailed information on the proposed Helium Exhaust Pipe for their MRI system prior to installation to ensure safety specifications are being met.
Required Details include:
(a) Architectural drawing or sketch with complete dimensions including lengths, bending radii, bending angles, and pipe diameters for entire Helium Exhaust Pipe run from RF enclosure to discharge location.
(b) Completed Helium Exhaust Pipe Verification Checklist (Provided by Local Philips Project Manager)
(c) Picture showing the area where the Helium Exhaust Pipe will discharge.
4.3 Magnets will not be released for delivery unless and until Helium Exhaust Pipe details are provided for verification and have been confirmed to meet all life safety specifications.

5. **Additional Terms Related to Sales of IGIT Products.**
5.1 As part of installation, Philips will connect the IGIT product to such DICOM compatible scanners as Customer may designate (in writing), including CT and MR scanners and, if ultrasound navigation is included in the product, an iU22 ultrasound system.
5.2 If Customer requires that Philips connect the IGIT product to more than two (2) scanners or other devices, then Philips shall invoice Customer and Customer shall pay for installation services at Philips' then-current daily service rate. Additionally, Customer shall (a) make the scanner(s) the Customer has designated available to Philips' installation representative, (b) create and provide a data set of the installation phantom on or before the installation date, and (c) have its IT representative available to assist in connecting the IGIT product to Customer's DICOM devices during the agreed installation time. If such installation and connection is delayed due to Customer failing in its obligations described in this section, then Philips may invoice Customer and Customer shall pay either for (a) any time that Philips spends waiting at the site for such obligation to be fulfilled, at Philips' then-current service rate, or (b) reasonable travel expenses if Philips has to reschedule such installation.
5.3 Training on the IGIT Product is not included with the purchase of the IGIT product unless it is separately identified on the quotation.

6. **Additional Terms Related to Sales of the IntelliSpace Breast Solution, including the MammoDiagnost VU.**
6.1 **Installation.** Philips will install the IntelliSpace Breast Solution and perform installation tests on the application running with the hardware provided as part of the solution, including the MammoDiagnost VU. Philips also configures and provides interfaces to the equipment and information systems set forth in a statement of work signed by Philips and the Customer. Interfaces set forth in Subsection 6.2 below are Customer's responsibility and are not part of Parts installation deliverables.
6.2 **Customer's Interface Obligations for Third Party RIS and MIS Applications.** Customer is responsible to develop and implement interfaces from the Licensed Software running on the client workstation to any third party Radiology Information System ("RIS") or Mammography Information System ("MIS") or to contract with the RIS and/or MIS vendor to have them perform these interface obligations on Customer's behalf. Interfacing the solution from the solutions server is not permitted. Philips shall provide Customer an API toolkit for the Licensed Software to aide Customer to perform such interface tasks. The successful and reasonably timely completion of these projects takes good faith efforts on the part of both Philips and Customer, especially when Customer has third party interfaces to develop and implement. A project implementation plan is based on completion dates mutually agreed by the parties that should be

reflective of the obligations of both parties. These dates are entered into the project implementation plan for this solution (the "Project Implementation Plan"). In the event Customer has not fulfilled its interface obligations by the dates set forth in the Project Implementation Plan, Customer will sign Philips' acceptance (MDIR) document for the Philips deliverables sold and pay the final payment described in Subsection 1.1(c), provided that Philips has installed the Philips deliverables and provided the interfaces Philips is responsible for pursuant to Subsection 6.1, and that the Philips deliverables substantially meet Philips' published specifications.

6.3 **Prior Validation of Operating System Updates and/or Upgrades.** Patches introduced by operating system oem's or upgrades to anti-virus software can impact the performance and functionality of the applications that run on them and affect patient safety. Philips shall perform validation testing of certain Microsoft operating systems and MacAfee anti-virus software during the warranty period. Philips shall have no obligation to validate any other third party operating system or anti-virus software. Customer shall not install or use (a) operating system patches, updates or upgrades; (b) anti-virus updates (except to the DAT files, i.e., virus definitions); or, (c) upgrades to anti-virus search engines, collectively (a)-(b) prior to validation testing and approval by Philips ("Unauthorized Updates"). Philips shall have no liability, including, without limitation, for warranty claims, arising from use of the Licensed Software with Unauthorized Updates. In the event Philips discovers that Customer is using an Unauthorized Update with the Licensed Software, Philips shall have the right to require Customer to roll back to the most recently validated versions of operating systems and anti-virus, prior to performing any support.

6.4 **Customer's Network Connectivity Obligations.** Customer must have network connectivity between the IntelliSpace Breast solution server, the client workstation, and the optional DynaCAD server of not less than 1GB/s, and all three systems must be on the same subnet. A connection of no less than 100 MB/s is required between the IntelliSpace Breast solution and the hospital network. However for optimal performance a 1GB/s network between the IntelliSpace Breast and the hospital network is recommended.

6.5 **RSN Warranty Condition Requirement.** As a condition to receiving warranty service on this solution, Customer agrees it shall use Philips Remote Service Network ("RSN") service to enable Philips to access the system to perform its support obligations.

PHILIPS PRODUCT WARRANTY

CARDIOVASCULAR (CV) SYSTEMS

This product warranty document is an addition to the terms and conditions set forth in the quotation to which this warranty document is attached. The terms and conditions of the quotation are incorporated into this warranty document. The capitalized terms herein have the same meaning as set forth in the quotation.

TWELVE-MONTH SYSTEM WARRANTY

Philips warrants to Customer that the Philips Vascular and Cardiac Systems (the "System") as delivered to Customer will perform in substantial compliance with its performance specifications for a period of twelve (12) months upon first patient use. Any glassware or flat detectors provided with the System is subject to special warranty terms set forth below.

PLANNED MAINTENANCE

During the warranty period, Philips personnel will schedule planned maintenance visits, in advance, at a mutually agreeable time on weekdays, between 8:00 A.M. and 5:00 P.M. local time, excluding Philips observed holidays.

SYSTEM UPGRADES

Any commercially available upgrade to the System which is hereafter installed by Philips during the original term of the System warranty shall be subject to the warranty terms contained in the first paragraph of this warranty, except that such warranty shall expire on the later of: a) upon termination of the initial twelve (12) month warranty period for the System on which the upgrade is installed or b) after ninety (90) days for parts only from the date of installation.

MRC X-RAY TUBES

Philips warrants to Customer, for the warranty periods further specified in this section, that the Philips X-Ray tube will be substantially free from defects in material and manufacturing workmanship, which impair performance under normal use as specified in Philips product descriptions and specifications.

The warranty period for MRC tubes provided with Customer's purchase of a new or refurbished X-ray system shall be the shorter of thirty-six (36) months after installation or thirty-eight (38) months after date of shipment from Philips. The warranty period for purchases of replacement tubes shall be the shorter of twelve (12) months after installation or fourteen (14) months after date of shipment from Philips.

MRC TUBE WARRANTY EXCLUSION

The above warranty shall not apply to X-ray tubes outside the United States and Canada. Philips' obligations under the product warranty do not apply to any product defects resulting from: improper or inadequate maintenance or calibration by Customer or its agents; Customer or third party supplied software, interfaces, or supplies; use or operation of the product other than in accordance with loss, or damage in transit; improper site preparation; unauthorized maintenance or Philips' applicable product specifications and written instructions; abuse, negligence, accident, modifications to the product; or, to viruses or similar software interference resulting from the connection of the product to a network.

MRC TUBE WARRANTY REMEDIES

If a tube is found to fail during the warranty period, and if, in the best judgment of Philips, the failure is not due to neglect, accident, improper installation, use contrary to instructions, or the exclusions stated above, Philips' tube warranty liability hereunder is limited to, at Philips option, the repair or replacement of the tube. Any replacement tube would have a warranty period equal to the balance of the warranty period left on the tube replaced.

IMAGE INTENSIFIER TUBES

Philips warrants the image intensifier tubes provided with the System, if any, will be free from defects in material and manufacturing workmanship for twenty-four (24) months. Claims must be made within twenty-four (24) months after installation or twenty-seven (27) months after date of shipment from Philips, whichever occurs first. If an image intensifier tube fails to meet this warranty, as Customer's sole and exclusive remedy, upon return of the tube, Philips will provide a prorated credit towards the purchase of a replacement tube from Philips as follows:

USAGE				CREDIT
0	to within	12	months	100%
12	to within	13	months	50%
13	to within	14	months	46%
14	to within	15	months	42%
15	to within	16	months	37%
16	to within	17	months	33%
17	to within	18	months	29%
18	to within	19	months	25%
19	to within	20	months	21%
20	to within	21	months	17%
21	to within	22	months	12%
22	to within	23	months	8%
23	to within	24	months	4%

Tubes received by Philips under this warranty that are found to meet all test specifications will be returned to the Customer and the warranty will continue as of the original date of installation. Examination of the returned tube may necessitate its destruction, but Philips' liability shall, in any case be limited to repair or replacement as aforesaid, only if in its sole opinion the tube has been properly used, installed and applied and has not been subjected to neglect, accident, or improper installation, or use. Transportation charges and risk of loss, both ways, of returned or replaced tubes shall be at the expense of the Customer.

DYNAMIC FLAT DETECTORS

Philips warrants the flat detectors provided with the System, if any, will be free from defects in material and manufacturing workmanship for twelve (12) months. Claims must be made within twelve (12) months after installation or fifteen (15) months after date of shipment from Philips, whichever occurs first. If a detector fails to meet this warranty, as Customer's sole and exclusive remedy, upon return of the detector, Philips will provide Customer a replacement detector at no additional charge.

SYSTEM SOFTWARE AND SOFTWARE UPDATES

The software provided with the System will be the latest version of the standard software available for that System as of the 90th day prior to the date the System is delivered to Customer. Updates to standard software for the System that do not require additional hardware or equipment modifications will be performed as a part of normal warranty service during the term of the warranty.

All software is and shall remain the sole property of Philips or its software suppliers. Use of the software is subject to the terms of a separate software license agreement. Customer must sign all such license agreements prior to or upon the delivery of the product. No license or other right is granted to Customer or to any other party to use the software except as set forth in the license agreements.

Any Philips maintenance or service software and documentation provided with the product and/or located at Customer's premises is intended solely to assist Philips and its authorized agents to install and to test the System, to assist Philips and its authorized agents to maintain and to service the System under a separate support agreement with Customer, or to permit Customer to maintain and service the System. Customer agrees to restrict the access to such software and documentation to Philips' employees and those of its authorized agents, and to authorized employees of Customer only.

WARRANTY LIMITATIONS

Philips' obligations under the System warranty are limited, at Philips' option, to the repair or the replacement of the System or a portion thereof, or to a credit or refund of a portion of the purchase price paid by Customer. Any refund or credit will be paid to Customer when the System is returned to Philips. Certain of the parts used in the manufacture or installation of, or in the replacement parts for, this System may contain refurbished components. If such components are used, they will be subject to the same quality control and inspection procedures as all other components in the System. Any System warranty is made on condition that Philips receives written notice of a System defect during the warranty period, and within thirty (30) days following the discovery of the defect by Customer. Philips' obligations under the System warranty do not apply to any System defects resulting from: improper or inadequate maintenance or calibration by Customer or its agents; Customer or third party supplied software, interfaces, or supplies; use or operation of the product other than in accordance with loss, or damage in transit; improper site preparation; unauthorized maintenance or Philips' applicable product specifications and written instructions; abuse, negligence, accident, modifications to the System; or to viruses or similar software interference resulting from the connection of the product to a network. Philips does not provide a warranty for any such third party products furnished to Customer by Philips; however, Philips shall use reasonable efforts to extend to Customer the third party warranty for the product. The obligations of Philips described above are Philips' only obligations and Customer's sole and exclusive remedy for a breach of a System warranty. Repairs or replacement parts do not extend the term of this warranty.

THE WARRANTIES SET FORTH IN THIS WARRANTY DOCUMENT WITH RESPECT TO THE SYSTEM (INCLUDING THE SOFTWARE PROVIDED WITH THE SYSTEM), GLASSWARE, AND DETECTORS ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE SYSTEM, SOFTWARE, GLASSWARE, DETECTORS, AND THE TRANSACTIONS CONTEMPLATED BY THE QUOTATION, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ACCESS TO SYSTEM

Philips shall have full, free and safe access to the System and Customer's operation, performance and maintenance records for the System, on each scheduled or requested warranty service visit. Philips shall also have access to and use of any machine, service, attachment, features or other equipment required to perform the necessary service contemplated herein at no charge to Philips. Customer waives warranty service if it does not provide such access to the System and Customer's records. Should Philips be denied access to the System and Customer's records at the agreed upon time, a charge equal to the appropriate hourly rate will be accepted by Customer for "waiting time."

WARRANTY SERVICE

In the event it is not possible to accomplish warranty service within normal working hours (8:00 A.M. to 5:00 P.M., Monday through Friday, excluding Philips observed holidays), or in the event Customer specifically requests that warranty service be performed outside of Philips normal working hours, Customer agrees to pay for such services at Philips standard service rates in effect. Maintenance Agreements are available for extended coverage.

TRANSFER OF SYSTEM

In the event Customer transfers or relocates the System, all obligations under this warranty will terminate unless Customer receives the prior written consent of Philips for the transfer or relocation. Upon any transfer or relocation, the System must be inspected and certified by Philips as being free from all defects in material, software and workmanship and as being in compliance with all technical and performance specifications. Customer will compensate Philips for these services at the prevailing service rates in effect as of the date the inspection is performed. Any System which is transported intact to pre-approved locations and is maintained as originally installed in mobile configurations will remain covered by this warranty.

CONDITIONS

This warranty is subject to the following conditions: the System (a) is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips), (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips written instructions and for the purpose for which the products were intended, (c) is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the System, and (d) Customer is to notify Philips immediately in the event the System at any time fails to meet its printed performance specifications.

LIMITATIONS OF LIABILITY AND DISCLAIMERS

The liability, if any, of Philips AND ITS AFFILIATES for damages whether arising from breach of the terms in the quotation, breach of warranty, negligence, indemnity, strict liability or other tort, or otherwise with respect to the products and services is limited to an amount not to exceed the price of the product or service giving rise to the liability.

IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF THE TERMS IN THIS QUOTATION, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT. PHILIPS SHALL HAVE NO LIABILITY FOR ANY GRATUITOUS ADVICE PROVIDED TO THE CUSTOMER.

FORCE MAJEURE

Philips and Customer shall each be excused from performing its obligations arising from any delay or default caused by events beyond its reasonable control including, but not limited to: acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities.

Philips system specifications are subject to change without notice Document Number 4535 983 03234 999

PART 2 OF 2 -

ENCLOSURES FOR

DUITS 10/14/13 LETTER

PHILIPS HEALTHCARE
A division of Philips Electronics North America Corporation
22100 Bothell Everett Highway
P.O. Box 3003
Bothell, Washington 98041-3003

PHILIPS

Quotation #: 1-T8EI0O	**Rev:** 6	**Effective From:** 08-Mar-13	**To:** 22-Apr-13

Presented To:

DUKE UNIVERSITY MEDICAL CENTER
2301 ERWIN RD
DURHAM, NC 27710

Tel:

Alternate Address:

Presented By:

Bethann Griffith-Subik
Account Manager
Tel: (919) 677-9046
Fax: (919) 677-9047

Steve Weiss
Regional Manager
Tel: (678) 924-6087
Fax: (678) 924-6003

Date Printed: 08-Mar-13

Submit Orders To:

22100 BOTHELL EVERETT HWY
BOTHELL WA 98021
Tel: (888) 564-8643
Fax:(425) 458-0390

IMPORTANT NOTICE: Health care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).

Quote Solution Summary

Line #	Product	Qty	Price
	100751 Xper Flex Cardio	1	$159,260.00
		Equipment Total:	$159,260.00

Solution Summary Detail

Product	Qty	Each	Monthly	Price
100751 Xper Flex Cardio	1	$159,260.00		$159,260.00

Buying Group: DUKE UNIVERSITY HEALTH SYSTEMS ZMA **Contract #:** MST0000100

Addt'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Payment Terms: 0% Down, 80% Upon Delivery, 20% Due When the Product is Available for First Patient Use, Net due upon receipt

Quote Summary

100751 Xper Flex Cardio

Qty	Product
1	P_860335_SC4 Xper Flex Cardio Flex Cardio 2010
1	P_860335_PL1 Xper Flex Cardio Control Room
1	P_860335_SF1 Side Stream ETCO2
1	P_860335_SF8 FFR Package
1	SF4 DXL Algorithm
1	P_860337_DS1 4:3 LCD HQ Display (19 inch)
1	P_860337_DM6 Xper Flex Cardio Table Mount
1	AS3 Customer prov. Data Center and/or Broker Server HW
1	RK4 Customer to provide rack enclosure
1	P_860337_CK1 Installation Cable Kit Control Room
1	FNA0974 Clinical Configuration Training, Offsite
1	FNA0988 OnSite Clinical Training, 2 days
1	FNA0989 OnSite Clinical Training, Additional day
1	FNA0857 Total number of Facilities
1	989801200654 Project Implementation Services
1	SEBLRSVNP1 Customer Note

100751 Xper Flex Cardio

System Type: New
Freight Terms: FOB Destination
Warranty Terms: Part numbers beginning with two (2) asterisks (**) are covered by a System 12 Months Warranty. All other part numbers are third (3rd) party items.
Special Notations: Contingencies must be removed 120 days before scheduled shipment to assure delivery on specified date. Any rigging costs are the responsibility of the Purchaser.
Additional Terms:

Line #	Part #	Description	Qty	Each	Price
1	**P_860335_SC4	**Xper Flex Cardio Flex Cardio 2010**	1	$24,560.00	$24,560.00

- Complete, pre-configured FC2010, geared for quick system repairs
- Device only (does not include installation cables or patient cables)

Monitoring Parameters:
- Four (4) invasive pressure channels
- 12 Lead ECG
- Respirations
- Body Temp
- NIBP
- SPO2
- Integrated Cardiac Outputs

Line #	Part #	Description	Qty	Each	Price
2	**P_860335_PL1	**Xper Flex Cardio Control Room**	1	$67,120.00	$67,120.00

Xper Flex Cardio Control Room configuration is a physiomonitoring/hemodynamic system that is optimized for the cath lab environment. The system allows for monitoring the patient's vital signs as well as allows for hemodynamic measurements required during interventional procedures. This Control Room configuration consists of a signal acquisition unit that is installed within the procedure room and a computer workstation in the x-ray control room. This configuration is typically used within the cath lab, hybrid OR and multi-purpose labs where cardiac monitoring is required. User logins allow for networking to a central database server for archival of case procedure information. The system outputs the monitored signals to a boom display within the procedure room, while dual LCDs displays connected to the control room workstation can be used for all of the hemodynamic and information management functionality.

Software Features:
-Physiomonitoring, manual or automated entry of patient information in case details, sampling of waveforms, charting, hemodynamics
-Non-clinical functionality available via Xper Information Management modules loaded on the control room workstation

Xper Information Management modules included:
-Hemodynamic control software
-Charting for case procedure documentation
-Hemodynamic calculations
-Vitals capture
-Scheduler

Optional Features:
-FFR Measurement for Volcano or St. Jude
-End Tidal CO2 (Side Stream and/or Main Stream)
-16 Lead ECG
-ECG Analysis using Philips DXL Algorithm

100751 Xper Flex Cardio					
Line #	**Part #**	**Description**	**Qty**	**Each**	**Price**
		Optional Modules: -Xper IM Documentation Workflow Modules -Xper IM Registries -Xper IM Patient Status Viewer Minimum Hardware included: -Flex Cardio device (Model FC2010) -Workstation -Dual LCD Displays -Keyboard -Mouse -Patient cable kit Minimum Software included: -Microsoft Windows 7 or greater -Current version of Xper IM software for workstation -PC Anywhere v12.5 or greater -McAfee Antivirus Monitoring functionality included: -NIBP -Respiration -Temperature -12-lead ECG -SpO2 -Cardiac output (Thermodilution) -Invasive pressures (4 channels) Requires purchase of: -Xper IM Data Center SW -Table Mount -4:3 LCD HQ Display NOTE: - Pressure transducers, or adapter cables, are not included. - Contact: Fogg System Company USA: 1-800-525-0292 http://www.foggsystem.com/			
3	**P_860335_SF1	**Side Stream ETCO2** Incorporates Side Stream End Tidal CO2 monitoring capabilities to Xper Flex Cardio devices via external Philips Sidestream cable (M2741A) - Monitoring accomplished via nasal canula. Include: -One box (10 each) disposable Adult CO2/O2 Nasal Canulas (M2750A) -One box (10 each) disposable Pediatric CO2/O2 Nasal Canulas (M2751A)	1	$10,470.00	$10,470.00
4	**P_860335_SF8	**FFR Package**	1	$21,490.00	$21,490.00

100751 Xper Flex Cardio

Line #	Part #	Description	Qty	Each	Price

The FFR Measurement for Volcano option enables a Volcano SmartMap (TM) device to be connected to Xper Flex Cardio physiomonitoring system for integrated Fractional Flow Measurements.

Features
-Compatibility with Volcano SmartMap (TM) device allowing use of Volcano guide wires for monitoring pressure waveforms
-Ability to record a sample of the pressure waveform
-Real time, dynamic FFR measurement and capture
-Retrospective review of FFR pressure waveform

Requires
-Model 6500 SmartMap Pressure Instrument (not included)

The FFR Measurement for St. Jude option enables a St. Jude (RADI) Aeris (TM) device to be connected to Xper Flex Cardio physiomonitoring system for integrated Fractional Flow Measurements.

Features
-Compatibility with St. Jude Aeris (TM) device allowing use of St. Jude (RADI) guide wires for monitoring pressure waveforms
-Ability to record a sample of the pressure waveform
-Real time, dynamic FFR measurement and capture
-Retrospective review of FFR pressure waveform

Requires
-St. Jude Pressure Wire Receiver 12722

5	**SF4	**DXL Algorithm**	1	$16,380.00	$16,380.00

The Philips DXL algorithm analysizes and interprets 12 lead or 16 lead ECGs captured using Xper Flex Cardio physiomonitoring system. It is a post-capture analysis tool that allows for assistive interpretation of sampled 12 lead ECG waveforms.

Features
-12 lead integrated analysis to provide interpretation of rhythm and morphology for a wide variety of patient populations
-16 lead integrated analysis to take advantage of optional right chest and back electrodes to provided extended interpretations
-ST maps to provide visual representation of ST deviations in frontal and horizontal planes
-Critical values to highlight conditions requiring clinical attention

6	**P_860337_DS1	**4:3 LCD HQ Display (19 inch)**	1	$1,310.00	$1,310.00

19" Medical Grade LCD Color Display (1280 x 1024 resolution) for mounting on suspension boom in procedure room, or for use with client workstations

- Includes VGA Cable (To be pulled / installed by customer). Cable not included with Boom monitor if purchased with a hemodynamic system, as the cable is included with that product.

7	**P_860337_DM6	**Xper Flex Cardio Table Mount**	1	$550.00	$550.00

This Xper Flex Cardio Table Mount is a customized mounting system and is required to mount FC2010 to x-ray table. The mount includes cable management to minimize clutter of cables connected to the FC2010 device.

*This wall mount is optimized for the Philips Allura X-ray table, but could be used for x-ray tables from other manufacturers.

100751 Xper Flex Cardio

Line #	Part #	Description	Qty	Each	Price
8	**AS3	**Customer prov. Data Center and/or Broker Server HW**	1	$0.00	$0.00

Customer to provide Data Center Server hardware that meets or exceeds the following minimum specifications:
-File Server
- Main Board
- Dual Core 1.6 GHz or greater processor
- 4 GB RAM
- Hard Disk (500 GB capacity, RAID possible)
- DVD-ROM drive
- Video – 1280 x 1024 res, 16 bit color Min
- 10/100/1000 Network Adapter (may have multiple)
-Microsoft Windows Server Operating System
-Microsoft SQL Server Software
-Symantec pcAnywhere
-Rack in which to place Server, monitor, keyboard, mouse and UPS

Alternatively, customer to provide higher capacity Data Center server hardware, recommended for use when there is a need for either higher database storage capacity, or to allow multiple facilities to share a single data center, to meet or exceed the following specifications:
- File Server
- Main Board
- Dual Quad Core 3.16 GHz or greater processor
- 32 GB RAM
- RAID 5 or greater
- DVD-ROM Drive
- 4 TB Storage Space
- Video – 1280 x 1024 res, 24/32 bit color Min
- 10/100/1000 Network Adapter (2)
-Microsoft Windows Server Operating System
-Microsoft SQL Server Software
-Symantec pcAnywhere
-Rack in which to place Server, monitor, keyboard, mouse and UPS
NOTE:
If this hardware is to support more than one facility, each facility must have a 1000mb uplink between the facility and the Server.

Customer to provide the Interface Server hardware, to meet or exceed the following minimum specifications:
-File Server
-Main Board
-Dual Core 1.6 GHz or greater processor
-4 GB RAM
-RAID 5 array (500 GB capacity)
-CD-ROM drive
-Video – 1280 x 1024 res, 24/32 bit color Min
-10/100/1000 Network Adapter (2)
-Microsoft Windows Server Operating System
-Microsoft SQL Server Software
-Symantec pcAnywhere
-Rack in which to place Server, monitor, keyboard, mouse and UPS

100751 Xper Flex Cardio					
Line #	**Part #**	**Description**	**Qty**	**Each**	**Price**
9	**RK4	**Customer to provide rack-enclosure**	1	$0.00	$0.00
10	**P_860337_CK1	**Installation Cable Kit Control Room**	1	$1,360.00	$1,360.00
		Provides all installation cables required for normal installation, Flex Cardio Control Room.			
11	**FNA0974	**Clinical Configuration Training, Offsite**	1	$4,500.00	$4,500.00
		This comprehensive five (5) day training is designed to thoroughly prepare the System Administrator / Super-user to deploy and maintain the back-end features of Xper Information Management. The facility must purchase at least one class and facility representative must attend prior to implementation of Xper Flex Cardio hemodynamic monitoring system. After completing this course the student will be able to: - Describe the components that comprise the Xper IM network - Configure the software as necessary for the hospital - Admit a case - Describe the function of the Portal Designer and create a new custom portal - Configure the User Administration dialog for User and Signature password settings - Describe the User setting's tabs and add a new user and specify the necessary settings - Configure the Monitoring Environment for the facility - Describe the process of charting entries in a case - Customize the System and Procedure tables - Customize the menu structure to meet the lab's needs - Develop Kits to create menu charting shortcuts - Create a Custom Form to track locally developed database fields - Modify Registry fields and scrapers to tailor the list to the facility - Customize a database Scraper entry for the different types of scrapers Training is conducted off-site at the Melbourne, FL IPC headquarters Education Center. The price includes all course materials, equipment for hands-on troubleshooting, and complimentary breakfast and lunch each day. Other expenses are not included. Price is per person. All elements of training must be completed during the service warranty period of the equipment. A charge will incur after the warranty.			
12	**FNA0988	**OnSite Clinical Training, 2 days**	1	$0.00	$0.00
		Provides one Clinical Applications Specialist on-site for two days (minimum 8 hours/day) Training is valid for one year from the purchase date. Any unused training will expire after this time.			
13	**FNA0989	**OnSite Clinical Training, Additional day**	1	$0.00	$0.00
		Provides one Clinical Applications Specialist on-site for one additional day (minimum 8 hours/day). Training is valid for one year from the purchase date. Any unused training will expire after this time.			
14	**FNA0857	**Total number of Facilities**	1	$0.00	$0.00

100751 Xper Flex Cardio

Line #	Part #	Description	Qty	Each	Price
15	989801200654	**Project Implementation Services**	1	$11,520.00	$11,520.00

Project implementation

Philips Healthcare applies disciplined project management methodology to delivery of each engagement. Our methodology closely parallels the Project Management Institute's (PMI) worldwide -recognized framework – Initiating, Planning, Executing, Controlling and Closing. The Philips team, led by an experienced project manager, will works with you throughout the duration of the project to deliver the products and services described in this quotation. The project manager is responsible for all aspects of the project and ensuring that all deliverables are completed with a high degree of customer satisfaction.

Depending on the nature of your project – implementation, upgrade or expansion – the Philips team is comprised of experts needed to deliver your solution. Team members typically include the following resources.

- Implementation Specialists - responsible for technical work such as installation and configuration of the system hardware and software
- Application Consultants – responsible working within the clinical environment providing expertise in workflow, application configuration and training
- Integration Engineer – responsible for development and testing of HIS and clinical interfaces

The work effort to implement your solution is based upon the specific configuration that has been defined in the quotation. The Statement of Work (SOW) or Project Scope Document (PSD) describes how the solution will be implemented within your environment.

Line #	Part #	Description	Qty	Each	Price
16	SEBLRSVNP1	**Customer Note**	1	$0.00	$0.00

proposal is for planning purposes only

100751 Xper Flex Cardio

LIST PRICE	$159,260.00
DISCOUNT	$0.00
NET PRICE	$159,260.00

Buying Group: DUKE UNIVERSITY HEALTH SYSTEMS ZMA Contract #: MST0000100

Addt'l Terms:

Each Quotation solution will reference a specific Buying Group/Contract Number representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. If no Buying Group/Contract Number is shown, Philips' Terms and Conditions of Sale will apply to the quoted solution.

Each equipment system listed on purchase order/orders represents a separate and distinct financial transaction. We understand and agree that each transaction is to be individually billed and paid.

Price above does not include any applicable sales taxes.

The preliminary delivery request date for this equipment is:_____.

If you do not issue formal purchase orders indicate by initialing here_____.

Tax Status:

Taxable_____ Tax Exempt_____

If Exempt, please indicate the Exemption Certification Number:_____, and attach a copy of the certificate.

Delivery/Installation Address:

_____

_____

_____

Invoice Address:

_____

_____

_____

Contact Phone #:

_____

Contact Phone #:

_____

Purchaser approval as quoted:

_____

Date:

_____

Title:

_____

This quotation is signed and accepted by an authorized representative in acknowledgement of the system configuration, terms and conditions stated herein.

Philips Standard Terms and Conditions of Sale with the IPC/Xcelera Schedule

The products and services listed in the quotation are offered by Philips Healthcare, a division of Philips Electronics North America Corporation ("Philips") only under the terms and conditions described below.

1. **Price; Taxes.** The purchase price stated in the quotation does not include applicable sales, excise, use, or other taxes in effect or later levied. Customer shall provide Philips with an appropriate exemption certificate reasonably in advance of the date the product is available for delivery otherwise, Philips shall invoice Customer for those taxes, and Customer shall pay those taxes in accordance with the terms of the invoice.

2. **Cancellation.** Philips' cancellation policies are set forth in the applicable schedule attached to these Terms and Conditions of Sale.

3. **Payment Terms.**
3.1 Unless otherwise specified in the quotation, Philips will invoice Customer, and Customer will immediately pay such invoice on receipt for each product in accordance with the payment terms set forth in the applicable schedule attached to these Terms and Conditions of Sale:
3.2 Orders are subject to Philips' on-going credit review and approval.
3.3 Customer shall pay interest on any amount not paid when due at the maximum rate permitted by applicable law. If Customer fails to pay any amount when due, in addition to any other rights or remedies available to Philips at law or in equity, Philips may discontinue the performance of services, discontinue the delivery of the product, or deduct the unpaid amount from any amounts otherwise owed to Customer by Philips under any agreement with Customer. In any action initiated to enforce the terms of the quotation following a Customer default or product cancellation under an order arising from the quotation, Philips shall be entitled to recover as part of its damages all costs and expenses, including reasonable attorneys' fees, in connection with such action.
3.4 Credit Card. Philips, at its discretion, will accept a credit card for payment on orders with a net value of $50,000 or less.

4. **Trade - In.** If Customer will be trading-in any equipment (a "Trade-In"), then:
4.1 Customer represents and warrants that Customer has good and marketable title to such Trade-In;
4.2 Title to the Trade-In shall pass from Customer to Philips upon Philips making the new equipment available for first patient use. Removal of the Trade-In from Customer's site shall occur no later than the date Philips makes the new equipment available for first patient use, unless otherwise agreed in writing between Philips and the Customer; and
4.3 Notwithstanding anything to the contrary in any Business Associate Addendum ("BAA"), Customer represents and warrants that Customer has removed or de-identified all Protected Health Information ("PHI") from the Trade-In equipment as of the date the equipment is removed. To the extent Customer has not done so, Customer agrees to reimburse Philips for any out-of-pocket costs Philips incurs to remove or de-identify PHI from the Trade-In.
4.4 If (a) the condition of the Trade-In is not substantially the same when Philips removes the Trade-In (ordinary wear and tear excepted) as it was when Philips quoted the Trade-In value; or (b) Customer delays the removal of the Trade-In, then Philips may reduce the price quoted for such Trade-In or cancel the Trade-In and Customer will pay the adjustment amount within thirty (30) days of receipt of invoice.
4.5 If Philips does not receive possession of the Trade-In, Philips will charge Customer, and Customer will pay within thirty (30) days of receipt of invoice, the amount of the Trade-In allowance.
4.6 Evidence that Customer intends to trade in an asset as part of the purchase or lease of any product(s) shall be in the form of, but not limited to: (a) receiving a trade in quote and/or authorization from Philips on the value of the asset to be traded in; (b) providing Philips with serial numbers of assets to be traded in; and/or, (c) providing Philips with a de-installation date to remove an existing asset in order to install Philips quoted equipment.

5. **Leases.** If Customer desires to convert the purchase of any product to a lease, Customer will arrange for the lease agreement and all other related documentation to be reviewed and approved by Philips not later than ninety (90) days prior to the date of the availability for delivery of major components of the product. The Customer is responsible for converting the transaction to a lease, and is required to secure the leasing company's approval of all of these Terms and Conditions of Sale. No product will be delivered to the Customer until Philips has received copies of the fully executed lease documents and has approved the same.

6. **Security Interest.** Customer hereby grants to Philips a purchase money security interest in the products until all payments have been made. Customer shall sign any financing statements or other documents necessary to perfect Philips' security interests in the products. Where permitted by applicable law, Customer's signature on the quotation or on a purchase order issued as a result of the quotation gives Philips the right to sign on Customer's behalf and file any financing statement or other documents to perfect Philips' security interest in the product.

7. **Shipment and Risk of Loss.**
7.1 The applicable schedule attached to these Terms and Conditions of Sale shall apply for delivery.
7.2 Title to any product (excluding software), and the risk of loss or damage to any product shall pass to the Customer F.O.B. destination. Customer shall obtain and pay for insurance covering such risks at destination.

8. **Installation, Site Preparation, Remote Services.**
8.1 **Installation.** Customer shall provide Philips full and free access to the installation site and suitable and safe space for the storage of the products before installation. Customer shall advise Philips of conditions at or near the site, including any hazardous materials, that could adversely affect the installation or pose a health or safety risk to Philips' personnel, and shall ensure that those conditions are corrected and hazardous materials removed, and that the site is fully prepared and available to Philips before installation work begins. Customer shall ensure, at no charge to Philips, that there are no obstacles preventing Philips from moving the product from the entrance of the Customer's premises to the installation site. Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, and restoration work. The products will be installed during normal working hours. Philips will unpack the product, construct applicable pads (if required for certain products), connect the product to a safety switch or breaker to be installed by the Customer, and calibrate and test the product. If local labor conditions, including but not limited to a requirement to utilize union labor, require the use of non-Philips employees to participate in the installation of the product, then such participation of non-Philips employees shall be at Customer's expense. In such case, Philips will provide engineering supervision during the installation.

8.2 **Site Preparation.** Except where Philips has agreed in writing to provide construction services for a fee pursuant to a construction agreement and scope of work signed by Customer, Customer shall be responsible, at its expense, for the preparation of the installation site where the product will be installed including any required structural alterations. Customer shall provide any and all plumbing, carpentry work, conduit, wiring including communications and/or computer wiring, network equipment, power supply, surge suppression and power conditioning (except to the extent they are expressly included in the quotation), fire protection and environmental controls, ground fault and isolation system, and other fixtures and utilities required to properly attach, install, and use the product. Site preparation shall be in compliance with all safety, electrical, RF or magnetic shielding and acoustical suppression and building codes relevant to the product and its installation and use. The sufficiency of any installation site plans shall be the responsibility of Customer. Customer, at its expense, shall obtain all permits and licenses required by federal, state, or local authorities in connection with the installation and operation of the product, including any certificate of need and zoning variances. PHILIPS MAKES NO WARRANTY AND ASSUMES NO LIABILITY FOR THE FITNESS OR ADEQUACY OF THE SITE IN WHICH THE PRODUCT IS TO BE INSTALLED OR USED. CUSTOMER INDEMNIFIES PHILIPS AGAINST ANY CLAIMS, INCLUDING SUBROGATION CLAIMS, ARISING FROM CUSTOMER'S SITE PREPARATION RESPONSIBILITIES.

8.3 **Remote Services Network ("RSN").** Customer will (a) provide Philips with a secure location at Customer's premises to store one Philips RSN router (or a Customer-owned router acceptable to Philips at Customer's option) for connection to the equipment and to Customer's network; and (b) at all times during the warranty period provide Philips with full and free access to the router and a dedicated broadband Internet access node, including but not limited to public and private interface access, suitable to establish a successful connection to the products through the Philips RSN and Customer's network for Philips' use in remote servicing of the product, remote assistance to personnel that operate the products, updating the products software, transmitting automated status notifications from the product and regular uploading of products data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into services). Customer's failure to provide such access at the scheduled time will constitute Customer's waiver of the scheduled planned maintenance service and will void support or warranty coverage of product malfunctions until such time as planned maintenance service is completed or RSN access is provided. Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the products.

9. **Product Warranty.**

9.1 If a separate product warranty page prints as part of this quotation, that product warranty applies to your purchase and is incorporated herein; otherwise Section 9.2-9.7 shall apply.

9.2 **Hardware/Systems.** Philips warrants to Customer that the Philips equipment (including its operating software) will perform in substantial compliance with its performance specifications for a period of 12 months beginning upon availability for first patient use.

9.3 **Stand-alone Licensed Software.** For a period of ninety (90) days from the date Philips makes Stand-alone Licensed Software available for first patient use, such Stand-alone Licensed Software shall substantially conform to the technical user manual that ships with the Stand-alone Licensed Software. "Stand-alone Licensed Software" means sales of Licensed Software without a contemporaneous purchase of a server for the Licensed Software. If Philips is not the installer of the Stand-alone Licensed Software, the foregoing warranty period shall commence upon shipment.

9.4 If the start of the installation is delayed for any reason beyond the control of Philips for more than thirty (30) days following the date that Philips notifies Customer that the major components of the product are available for delivery, the warranty period begins on the thirty-first (31st) day following that date.

9.5 Philips' sole obligations and Customer's exclusive remedy under any product warranty are limited, at Philips' option, to the repair or the replacement of the product or a portion thereof, within thirty (30) days after receipt of written notice of such material breach from Customer ("Product Warranty Cure Period") or, upon expiration of the Product Warranty Cure Period, to a refund of a portion of the purchase price paid by the Customer, upon Customer's request. Any refund will be paid to the Customer when the product is returned to Philips. Warranty service outside of normal working hours (i.e. 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding Philips' observed holidays), will be subject to payment by Customer at Philips' standard service rates.

9.6 This warranty is subject to the following conditions: the product (a) is to be installed by authorized Philips representatives (or is to be installed in accordance with all Philips installation instructions by personnel trained by Philips); (b) is to be operated exclusively by duly qualified personnel in a safe and reasonable manner in accordance with Philips' written instructions and for the purpose for which the products were intended; and (c) is to be maintained and in strict compliance with all recommended and scheduled maintenance instructions provided with the product; and Customer is to notify Philips immediately if the product at any time fails to meet its printed performance specifications. Philips' obligations under any product warranty do not apply to any product defects resulting from improper or inadequate maintenance or calibration by the Customer or its agents; Customer or third party supplied interfaces, supplies, or software including without limitation loading of operating system patches to the Licensed Software and/or upgrades to anti-virus software (except DAT file changes) running in connection with the Licensed Software without prior validation approval by Philips; use or operation of the product other than in accordance with Philips' applicable product specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or viruses or similar software interference resulting from connection of the product to a network. Philips does not provide a warranty for any third party products furnished to Customer by Philips under the quotation; however, Philips shall use reasonable efforts to extend to Customer the third party warranty for the product. The obligations of Philips described herein and in the applicable product-specific warranty document are Philips' only obligations and Customer's sole and exclusive remedy for a breach of a product warranty.

9.7 THE WARRANTIES SET FORTH HEREIN AND IN PHILIPS' WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THE QUOTATION, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Philips may use refurbished parts in the manufacture of the products, which are subject to the same quality control procedures and warranties as for new products.

10. **Philips Proprietary Service Materials.** Any Philips maintenance or service software and documentation provided with the product and/or located at Customer's premises is intended solely to assist Philips and its authorized agents to install and to test the products or to assist Philips and its authorized agents to maintain and to service the products under warranty or a separate support agreement with Customer. Customer agrees to restrict access to such software and documentation to Philips' employees and those of Philips' authorized agents only and to permit Philips to remove its Proprietary Service Materials upon request.

11. Patent Infringement Claims.
11.1 Philips shall indemnify, defend, and hold harmless Customer against any new claim that a Philips Product provided in the quotation infringes, misappropriates, or violates any third party intellectual property right, whether patent, copyright, trademark, or trade secret, provided that Customer: (a) provides Philips prompt written notice of the claim; (b) grants Philips full and complete information and assistance necessary for Philips to defend, settle, or avoid the claim; and (c) gives Philips sole control of the defense or settlement of the claim.
11.2 The provisions of this section shall not apply if the product is sold or transferred.
11.3 If (a) a Philips' Product is found or believed by Philips to infringe such a claim; or, (b) Customer has been enjoined from using the Philips Product pursuant to an injunction issued by a court of competent jurisdiction, Philips may, at its option, (i) procure the right for Customer to use the product, (ii) replace or modify the product to avoid infringement, or (iii) refund to Customer a portion of the product purchase price upon the return of the original product. Philips shall have no obligation for any claim of infringement arising from: Philips' compliance with Customer's designs, specifications, or instructions; Philips' use of technical information or technology supplied by Customer; modifications to the product by Customer or its agents; use of the product other than in accordance with the product specifications or applicable written product instructions; use of the product with any other product; if infringement would have been avoided by the use of a current unaltered release of the products; or use of the Philips Product after Philips has advised Customer, in writing, to stop use of the Philips Product in view of the claimed infringement. Philips will not be liable for any claim where the damages sought are based directly or indirectly upon the quantity or value of products manufactured by means of the products purchased under this quotation, or based upon the amount of use of the product regardless of whether such claim alleges the product or its use infringes or contributes to the infringement of such claim. The terms in this section state Philips' entire obligation and liability for claims of infringement, and Customer's sole remedy in the event of a claim of infringement.

12. Limitation of Liability. THE TOTAL LIABILITY, IF ANY, OF PHILIPS AND ITS AFFILIATES FOR ALL DAMAGES AND BASED ON ALL CLAIMS, WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING FROM A PRODUCT, LICENSED SOFTWARE, AND/OR SERVICE IS LIMITED TO THE PRICE PAID HEREUNDER FOR THE PRODUCT, LICENSED SOFTWARE, OR SERVICE.
THIS LIMITATION SHALL NOT APPLY TO:
(a) THIRD PARTY CLAIMS FOR BODILY INJURY OR DEATH CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT;
(b) CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY DAMAGE;
(c) OUT-OF-POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXENT SUCH NOTICES ARE CAUSED BY PHILIPS' UNAUTHORIZED DISCLOSURE OF PHI; and,
(d) FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNATHORIZED DISCLOSURE OF PHI AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

13. DISCLAIMER. IN NO EVENT SHALL PHILIPS OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

14. Confidentiality. Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers and/or its patients, and the quotation and its terms, including the pricing terms under which Customer has agreed to purchase the products. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but in no event less than a reasonable amount of care. Each party shall disclose such confidential information only to its employees having a need to know such information to perform the transactions contemplated by the quotation. The obligation to maintain the confidentiality of such information shall not extend that (a) is or becomes generally available to the public without violation of this Agreement or any other obligation of confidentiality or (b) is lawfully obtained by the receiving Party from a third party without any breach of confidentiality or violation of law.

15. Compliance with Laws & Privacy.
15.1 Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to affirmative action, fair employment practices, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).
15.2 In the course of providing project implementation related services and/or warranty services to Customer, hereunder, it may be necessary for Philips to have access to, view and/or download computer files from the products that might contain Personal Data. "Personal Data" means information relating to an individual, from which that individual can be directly or indirectly identified. Personal Data can include both personal health information (i.e. images, heart monitor data, and medical record number) and non-health information (i.e. date of birth, gender). Philips will process Personal Data only to the extent necessary to perform and/or fulfill its project implementation related service, warranty service and/or warranty obligations hereunder.
15.3 It is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act ("ARRA"). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.

16. Excluded Provider. Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal health care program, nor have they been convicted of any health care related crime for the products and services provided under this Agreement (an "Excluded Provider"). Philips shall promptly notify Customer when it becomes aware that Philips or any of its employees or subcontractors, providing services hereunder, have become an Excluded Provider whereupon Customer may terminate this order by express written notice for product and services not yet shipped or rendered.

17. General Terms. The following additional terms shall be applicable to the purchase of a product:
17.1 **Force Majeure.** Each party shall be excused from performing its obligations (except for payment obligations) arising from any delay or default caused by events beyond its reasonable control including, but not limited to, acts of God, acts of third parties, acts of any civil or military authority, fire, floods, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities.
17.2 **Bankruptcy.** If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Philips may cancel any unfulfilled obligations, or suspend performance; however, Customer's financial obligations to Philips shall remain in effect.
17.3 **Assignment.** Customer may not assign any rights or obligations in connection with the transactions contemplated by the quotation without the prior written consent of Philips, which consent shall not be unreasonably withheld, and any attempted assignment without such consent shall be of no force or effect.
17.4 **Export.** Customer shall assume sole responsibility for obtaining any required export authorizations in connection with Customer's export of the products from the country of delivery.
17.5 **Governing Law.** All transactions contemplated by the quotation shall be governed by the laws of the state where the equipment will be installed, without regard to that state's choice of law principles, and expressly excluding application of the Uniform Computer Information Transactions Act ("UCITA"), in any form. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.
17.6 **Entire Agreement.** These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Philips' product-specific warranty document constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation, and supersede any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.
17.7 **Headings.** The headings in the quotation are intended for convenience only and shall not be used to interpret the quotation.
17.8 **Severability.** If any provision of the quotation is deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired, and shall continue in full force and effect.
17.9 **Notices.** Notices or other communications shall be in writing, and shall be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth in the quotation.
17.10 **Performance.** The failure of Customer or of Philips at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or services shall not serve as references in interpreting the terms and conditions of the quotation.
17.11 **Obligations.** Customer's obligations are independent of any other obligations the Customer may have under any other agreement, contract, or account with Philips. Customer will not exercise any right of offset in connection with the terms and conditions in the quotation or in connection with any other agreement, contract, or account with Philips.
17.12 **Additional Terms.** The Product specific schedules listed below are incorporated herein as they apply to the equipment listed on the quotation and their additional terms shall apply solely to Customer's purchase of the products specified therein.
If any terms set forth in a schedule conflict with terms set forth in these Terms and Conditions of Sale, the terms set forth in the schedule shall govern:
(a) Schedule 1: Xcelera, Xper IM, Cardiovascular Information System (CVIS) and TraceMasterVue EKG Storage System (TMV) Products.

LICENSED SOFTWARE

1. License Grant.
1.1 Subject to any usage limitations for the Licensed Software set forth on the product description of the quotation, Philips grants to Customer a non-exclusive and non-transferable right and license to use the computer software package ("Licensed Software") in accordance with the terms of the quotation. The License shall continue for as long as Customer continues to own the product, except that Philips may terminate the License if Customer is in breach or default. Customer shall return the Licensed Software and any authorized copies thereof to Philips immediately upon expiration or termination of this License.
1.2 The License does not include any right to use the Licensed Software for purposes other than the operation of the product. Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Except as otherwise provided under section 1.6, Customer may not copy, reproduce, sell, assign, transfer, or sublicense the Licensed Software for any purpose without the prior written consent of Philips. Customer shall reproduce Philips' copyright notice or other identifying legends on such copies or reproductions. Customer will not (and will not allow any third party to) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover the product or Licensed Software by any means whatsoever.
1.3 The License shall not affect the exclusive ownership by Philips of the Licensed Software or of any trademarks, copyrights, patents, trade secrets, or other intellectual property rights of Philips (or any of Philips' suppliers) relating to the Licensed Software.
1.4 Customer agrees that only authorized officers, employees, and agents of Customer will use the Licensed Software or have access to the Licensed Software (or to any part thereof), and that none of Customer's officers, employees, or agents will disclose the Licensed Software, or any portion thereof, or permit the Licensed Software, or any portion thereof, to be used by any person or entity other than those entities identified on the quotation. Customer acknowledges that certain of Philips' rights may be derived from license agreements with third parties, and Customer agrees to preserve the confidentiality of information provided by Philips under such third party license agreements.
1.5 The Licensed Software shall be used only on the product(s) referenced in the quotation.
1.6 Customer may transfer the Licensed Software in connection with sale of the product to a healthcare provider who accepts all of the terms and conditions of this License; provided that Customer is not in breach or default of this License, the Terms and Conditions of Sale, or any payment obligation to Philips.

2. Modifications.

2.1 If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the products shall become null and void. If Customer or any of its officers, employees, or agents should devise any revisions, enhancements, additions, modifications, or improvements in the Licensed Software, Customer shall disclose them to Philips, and Philips shall have a non-exclusive royalty-free license to use and to sub-license them.

2.2 The Licensed Software is licensed to Customer on the basis that (i) Customer shall maintain the configuration of the products as they were originally designed and manufactured and (ii) the product includes only those subsystems and components certified by Philips. The Licensed Software may not perform as intended on systems modified by other than Philips or its authorized agents, or on systems which include subsystems or components not certified by Philips. Philips does not assume any responsibility or liability with respect to unauthorized modification or substitution of subsystems or components.

071612 (Rev I)

Schedule 1

Xcelera, Xper IM, Cardiovascular Information System (CVIS) and TraceMasterVue EKG Storage System (TMV)

1. Definitions

1.1 "CVIS" includes CVIS's core modules and interfaces set forth on the quotation.

1.2 "Project Implementation Plan" shall mean the project management implementation plan, mutually agreed to by the parties, that sets timetables and the order of project rollout for the work scope set forth in the Statement of Work ("SOW"), applicable to the products purchased.

1.3 "Authorized Users" of the product shall mean persons performing patient care or those requiring administrative access, to patient records, as authorized by Customer, in support of performance of such services on patients admitted to Customer's facility.

2. Payment Terms.

Unless otherwise specified in the quotation, Philips will invoice Customer and Customer will pay such invoice on receipt for each product as follows:

2.1 10% of the purchase price shall be due with Customer's acceptance of the quotation.

2.2 70% of the purchase price shall be due on delivery of the major components of the product. Product installation will not begin until Customer has paid this portion of the purchase price.

2.3 20% of the purchase price shall be due when the product is available for first patient use. Available for first patient use means the product has been installed and substantially meets Philips' systems verification functionality set forth in the installation manual.

2.4 If the start of the installation is delayed for any reason beyond the control of Philips for more than thirty (30) days following the date that Philips notifies Customer that the major components of the product are available for delivery, the unpaid portion of the purchase price shall be due on the thirty-first (31st) day following such date.

3. Cancellation.

The quotation is subject to change or withdrawal prior to written acceptance by Customer. All purchase orders issued by Customer are subject to acceptance by Philips. If Customer cancels an order prior to product delivery, Customer shall pay the costs incurred by Philips up to the date of cancellation including, but not limited to, the costs to manufacture the product, the costs to provide any training, educational, or other services to Customer in connection with the order, a nominal restocking fee, and the costs to return or cancel any product ordered from a third party on Customer's behalf.

4. Delivery.

4.1 Philips will use reasonable efforts to ship the product to Customer: (a) by the mutually agreed upon shipment date; or (b) by the date stated in the quotation; or (c) as otherwise agreed in writing. Philips will ship the product according to Philips' standard commercial practices. Philips will deliver the equipment during normal working hours, 8:00 – 5:00 PM, in the time zone where the Customer is located. Philips may make partial shipments. Philips will pay shipping costs associated with product shipment.

4.2 Prior to the shipment of any product, Philips may change the construction or the design of the product without notice to the Customer so long as the function, footprint, and performance of the product are not substantially altered.

4.3 If Customer requests a delay in the date major components of the product are available for delivery, then Philips will place the product in storage and the unpaid portion of the purchase price shall be due. Customer will reimburse Philips for all storage fees incurred upon receipt of invoice.

5. Product Warranty.

5.1 Except for the additional limitations set forth in this section and Section 7 of this Schedule, the warranty set forth in Sections 9.2-9.7 of Philips Terms and Conditions of Sale is the sole warranty for the Philips products subject to this Schedule 1.

5.2 For upgrades to Xper IM, TMV, and CVIS, and Xcelera Licensed Software purchased without a concurrent server purchase, the following warranty terms shall apply and shall supersede Section 9.2 of the Philips Terms and Conditions of Sale:

(a) **Xper IM, TMV, and Xcelera Licensed Software Software Upgrades.** For a period of ninety (90) days from the date that a Licensed Software upgrade is available for first patient use, Philips warrants that such Licensed Software upgrade shall substantially conform to its documentation. Licensed Software upgrades do not include hardware costs.

(b) **Xper IM, TMV, and Xcelera Hardware Upgrades.** Philips warrants that any Philips-provided hardware purchased as a system upgrade or as a replacement part, with the exception of patient cables and/or disposable items (which have no warranty), shall be free from material defects in material and workmanship under normal use and service for a period of ninety (90) days from the date available for first patient use.

(c) **CVIS.** Section 9.1 of Philips Terms and Conditions of Sale shall not apply to CVIS Licensed Software or hardware. Section 9.2 of Philips Terms and Conditions of Sale shall apply to CVIS Licensed Software and hardware, except for the warranty periods set forth therein. This schedule modifies the warranty periods set forth in Section 9.2 as follows: (i) CVIS core module shall have a warranty period of ninety (90) days from the date Philips makes the first CVIS Licensed Software clinical module and interface, as applicable, implemented under the project, available to Customer for first patient use. Server hardware shall have a warranty period of one (1) year from the date Philips makes the first CVIS Licensed Software clinical module and interface, as applicable, implemented under the project, available to Customer for first patient use; and (ii) CVIS clinical module and associated interface specific to such module, if applicable, shall have a warranty period of ninety (90) days from the date that Philips makes such items available to Customer for first patient use.

6. Warranty Limitations.

The following additional warranty exclusions shall apply under Section 9.4(b) of Philips Terms and Conditions of Sale: (a) use of an Xper IM or Xcelera with a client device with less than a 100mbit connection to the server software for such products; or (b) use of the Xcelera, Webforum, on a workstation without a 3-D video card as required in the quotation.

7. Customer Room Preparation Responsibilities

7.1 Customer is responsible for all activities and costs necessary to prepare the facility for installation of the product by Philips. Customer's obligations include, but are not limited to, running all cable in procedure room and network cable to workstations prior to installation. For CVIS, Customer's obligations also include procuring the server to the specifications recommended by Philips prior to the date that the installation process commences per the Project Implementation Plan, mutually agreed to between the parties.

7.2 Prior to acceptance of the quotation, Customer shall obtain from the applicable Philips Implementation Team any other additional

Customer installation preparation requirements in connection with the implementation resulting from unique attributes of Customer's environment and the size of the implementation.

8. Archive Requirement.
Customer is required to have an archive for any Xcelera system provided hereunder. If Customer provides its own storage, Customer is responsible for procuring any specialty software or hardware (fiber channel or host bus adapter ("HBA")) necessary to manage storage and allow the system to access the storage. Customer is responsible for providing fiber channel switches, port upgrades, and other telecommunications and/or network hardware required for the Philips products to physically connect to the storage, regardless of whether Philips provides the storage.

9. Certified Hardware
Philips shall install the Licensed Software solely on certified hardware pursuant to Philips' specifications where such certified hardware is identified on the SOW, which the parties will execute and attach to the quotation. Customer shall not use the Licensed Software with any uncertified hardware.

10. Storage Sizing
Upon request, Philips will provide Customer with estimates of image study sizes for different types of studies that Customer can use as a general aide to calculate and determine its near-term and long-term storage requirements for Cardiology. Customer is responsible to determine what storage archive device types and sizes are required to support its Xcelera solution, whether through procurement from Philips or utilization of Customer's own existing storage solutions. Customer acknowledges that use of storage varies greatly based on its unique utilization of the system and based on factors that are outside Philips' control. Therefore, Customer is solely responsible to determine what storage archive device is best suited to meet its needs. As part of its decision making process in connection with archive device storage size, Customer should consider that study sizes are affected greatly by: (a) changes in the types and amount of modality equipment used; (b) technician discretion in file size creation; and (c) clinical protocols within a department. Customer is solely responsible for system administration for the Xcelera solution, which includes monitoring the storage archive device for its utilization levels and planning any necessary storage changes as Customer's requirements change.

11. Unauthorized Patches and Anti-Virus Updates.
Customer's installation or use of: (a) operating system patches, updates or upgrades; (b) anti-virus updates (except to the DAT files i.e. virus definitions); or (c) upgrades to anti-virus search engines without prior validation testing and approval from Philips ("Unauthorized Updates"), may adversely affect the functionality and performance of the Licensed Software. Philips shall perform validation testing of certain Microsoft operating systems, and MacAfee and Symantec's anti-virus software during the warranty period. Philips shall have no obligation to validate any other third party operating system or anti-virus software. If Customer installs or uses Unauthorized Updates, Philips shall have no liability or responsibility for performance of the Licensed Software and the warranty shall be void. If Customer is using Unauthorized Updates when requesting service support or an Unauthorized Update is discovered by Philips after commencing the technical support process, then, prior to being obligated to perform warranty support services during a service period, Philips may require Customer to roll back to the most recent operating system and anti-virus search engine versions that have been validated by Philips as posted on the Philips service internet site.

12. Interfaces.
12.1 **Xper IM, Xcelera & TMV Interfaces.** Philips' obligation to provide any Xper IM, Xcelera, or TMV interfaces is expressly conditioned upon Customer enabling its Hospital Information System ("HIS") system to send and receive HL7 messages to and from the applicable Philips products by the date the products are available for first patient use. If Customer has not fulfilled its interface obligations by such time, Philips may, at its discretion, terminate any interface obligations and refund any pre-paid amounts for interfaces against the applicable purchase order. Customer will execute any documentation reasonably requested by Philips to document such terminated interfaces. Upon Philips' issuance of a refund in accordance with this section, Customer shall be deemed to have accepted the applicable Philips products. Any interfaces terminated shall be re-evaluated under a separate new sales contract.
12.2 **CVIS Interfaces.** Philips' obligation to provide any interfaces to a CVIS core module is expressly conditioned upon Customer meeting its interface obligations by the date set forth in the Project Implementation Plan. If Customer has not fulfilled its interface obligations by such time, Philips may, at its discretion, terminate such interface obligations and refund any pre-paid amounts for interfaces and their associated clinical modules against the applicable purchase order. Customer will execute any documentation reasonably requested by Philips to document such terminated interfaces. Any interfaces and CVIS clinical modules terminated shall be re-evaluated under a separate new sales contract.

13. Customer Controlled Workflow Tools.
Certain Philips Products contain customer-maintained tools used in the creation and maintenance of interfaces, forms, screens, reports, data mappings, and calculations ("Customer Controlled Workflow Tools"). Because these tools control what information is presented to the end-user and how the information is presented, Customer must thoroughly test and validate each interface, form, screen, report, mapping, and calculation after making any changes to the Product or to external systems that supply data to the Philips Product. Failure to do so could result in information being presented to the end-user in a manner different than originally configured, less desirable to the patient care giver and negatively impacting patient care outcomes. Therefore, prior testing of any of the above changes by the Customer is recommended by Philips. In all cases, Customer is solely responsible for data field population in Philips products directly arising (i) from Customer's use of the Customer Controlled Workflow Tools or (ii) through the receipt of information delivered from a non-Philips information system that has been modified post project implementation test. These factors are not within Philips' control.

14. Frequent Data Backup/Disaster Recovery Responsibility.
Philips is not responsible for the development or execution of a business continuity/disaster recovery plan or backing up the data and images processed by the system. Philips is also not responsible for backing up the data in the CVIS core data database and any associated files. Customer is responsible for performing frequent backups of any data, patient information or images residing on the repository database, on Philips products, or an archive.

15. Statement of Work ("SOW").
Professional services performed in connection with Xcelera shall be performed pursuant to a SOW, which the parties will execute and attach to this quotation, subject to the terms set forth in this quotation.

16. Support Services.
16.1 During the applicable product warranty period, Philips shall provide, at no charge to Customer, Philips' then-current in-warranty service for the products. Customer shall use Philips Remote Service Network ("RSN") service to enable Philips to access the system to perform its support obligations.
16.2 Warranty exclusions set forth Section 9.4 also apply to Support Services. The conditions that resulted in the exclusion of product warranty coverage, set forth in Section 9.4, shall also apply to any service provided during an in-warranty or post warranty coverage period.

17. Migration.
Philips standard migration tool set-up service ("Migration Tool Set-Up Service") consists of Philips installing a migration solution tool, configuring the migration interface, testing the migration solution tool, and training the Customer to operate and manage the migration tool for Customer to perform the data migration ("Migration Set-up Tool Activities"). For the purposes of clarification, Migration Set-Up Activities do not include Philips performing the migration, including starting and stopping the migration tool process, loading off-line media, monitoring the process, and correcting the migrated data.

Unless Customer purchases a separate data migration project management consulting service from Philips and signs an SOW clearly indicating that Philips will be performing and managing the data migration on the Customers behalf ("Data Migration Project Management Consulting Service"), Philips is responsible solely to perform the Migration Set-Up Activities.

In all instances, Philips shall have no responsibility under either its Migration Tool Set-Up Service or Data Migration Project Management Consulting Service to: (a) locate missing studies; (b) fix corrupt media or studies; or, (c) repair failed Customer legacy hardware discovered during the migration service. Philips shall have no responsibility under the migration services to migrate studies affected by the foregoing events. Additionally, Customer shall have the sole responsibility to estimate the number of studies required to be migrated and to pay any additional costs that result from an estimation.

18. Systems Administration Requirement.
Customer, at all times, shall have a designated systems administrator that has completed systems administration for the version of the product running at Customer's site. Systems administration training set forth on the quotation is at no charge. However, any training, beyond that set forth in the quotation, shall be at customers' sole expense.

North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

July 23, 2013

Catharine W. Cummer, Regulatory Counsel, Strategic Planning
Duke University Health System
3100 Tower Blvd, Suite 1300
Durham NC 27707

Material Compliance

Project I.D. #:	J-8030-07
Facility:	Duke University Health System d/b/a Duke University Hospital
Project Description:	Construct a new bed tower for 160 existing acute care beds, 16 additional operating rooms, and five additional CT scanners, pursuant to Policy AC-3
County:	Durham
FID #:	943138

Dear Ms. Cummer:

In response to your letter of July 12, 2013 regarding the above referenced project, the Certificate of Need Section has determined that the proposed change is in material compliance with representations made in the application. These changes include the relocation of one unit of cardiac catheterization equipment from an existing mobile laboratory into one of the operating rooms currently under development to create a "hybrid" operating room. However, you should contact the Construction Section of the Division of Health Service Regulation to determine if they have any requirements pertinent to the proposed change.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination.

If you have any questions concerning this matter, please feel free to contact this office. Please refer to the Project I.D. # and Facility I.D. # (FID) in all correspondence.

Sincerely,

Michael J. McKillip
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR
Construction Section, DHSR

Certificate of Need Section
www.ncdhhs.gov
Telephone: 919-855-3873 • Fax: 919-733-8139
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Mailing Address: 2704 Mail Service Center •Raleigh, NC 27699-2704
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Ex C

Duke University Health System

Catharine W. Cummer
Regulatory Counsel, Strategic Planning

Via Electronic Delivery

July 12, 2013

Mr. Michael McKillip
Analyst
Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health and Human Services
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: Duke University Hospital Project # J-8030-07
Request for Material Compliance Determination

Dear Mr. McKillip:

On behalf of Duke University Health System, I am writing to seek confirmation that a proposal to install replacement cardiac catheterization equipment in one of the Duke Medical Pavilion operating rooms under development would be in material compliance with the certificate of need for Project # J-8030-07 and the conditions thereto.

In Project # J-8030-07, Duke was awarded a certificate of need for the development of 16 new operating rooms as part of its Duke University Hospital major hospital addition now identified as the Duke Medical Pavilion (DMP). While the building has been substantially completed and patients are scheduled to be moved into the building July 27, not all of the equipment for the project has been purchased and installed and the project therefore remains under development.

In the application for this project, cardiovascular surgery was specifically identified as one of the specialties that would populate the additional block time obtained with the new operating rooms. See Application for Project # J-8030-07, pages 51-52. Duke cited the projected growth in valve surgery as one of the reasons underlying the need for the project. See page 52. Duke has always therefore intended that the new operating rooms would accommodate and support cardiovascular procedures, specifically including cardiac valve surgery. In order to better support this surgical specialty, Duke is now considering a plan to relocate cardiac catheterization equipment from an existing mobile laboratory into one of the DMP operating rooms

3100 Tower Blvd Suite 1300 * Durham, NC 27707 * tel (919) 668-0857 * catharine.cummer@duke.edu

designated for cardiothoracic procedures to create a "hybrid" operating room. (Duke would first replace the existing equipment, which can be accomplished for less than $2 million, pursuant to a notice of exempt acquisition.) This equipment would be used for cardiac valve repair and replacement, among other procedures.

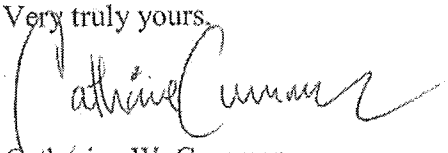
Even including the costs of upfitting one of the new DMP operating rooms to accommodate the replacement equipment, Duke's DMP project would remain within the total projected cost in our January 2010 correspondence of $614,349,999 (which represented a decrease from the original approved cost of $653,050,692). The installation of this equipment in an operating room will not entail the acquisition of any major medical equipment (as Duke is entitled to replace its existing equipment without a certificate of need) or the development of any new institutional health services not already addressed in the certificate of need and subsequent correspondence. The scope and intent of the project remain the same.

Duke's existing mobile catheterization lab currently experiences very low volumes, and this equipment could be better and more efficiently and effectively utilized within the hospital to support procedures in a hybrid operating room. We are aware that DLP Cardiac Partners would be able to provide mobile catheterization services as needed at the existing host sites (which currently include Maria Parham Hospital and Community Memorial Health Center in Virginia), and we would seek the consent and approval of those sites for this replacement and relocation of cardiac catheterization equipment before making any final decision on this proposal. We would also note that we are not aware of any conditions or restrictions on the use of this existing equipment.

Because this equipment is intended to be used primarily for complex surgical procedures and not for the traditional cardiac catheterization procedures reported in the hospital license renewal application, Duke would intend not to report this equipment as cardiac catheterization equipment in the inventory unless specifically instructed to do so by the Medical Facilities Planning Section (consistent with the treatment of its existing hybrid operating room equipment).

We believe that this proposal to relocate replacement equipment into a new DMP operating room would leave us in material compliance with the representations in our certificate of need application and the conditions on the certificate of need, and we seek your confirmation that this understanding is correct. Please let me know if you have any questions.

Very truly yours,



Catharine W. Cummer

3100 Tower Blvd Suite 1300 * Durham, NC 27707 * tel (919) 668-0857 * catharine.cummer@duke.edu

Mr. Michael McKillip
July 12, 2013

cc: Monte Brown, M.D.
Kevin Sowers
Shawn Subasic

3100 Tower Blvd Suite 1300 * Durham, NC 27707 * tel (919) 668-0857 * catharine.cummer@duke.edu