

**From:** Eaddy, Trina [REDACTED]@philips.com>  
**Sent:** Friday, March 27, 2020 12:13 PM  
**To:** adam.boehler@[REDACTED].gov  
**Cc:** Padula, Nick [REDACTED]@philips.com>  
**Subject:** Philips Ventilator Proposal  
**Importance:** High

Mr. Boehler,

Thank you for speaking with Nick and I this morning. To ensure you have the information you need, please find attached the proposal we submitted to the White House on Monday and the Letter Contract provided on last night. Dr. Navarro mentioned on our call this past Monday that he would have the lead HHS Contracting Officer work on this contract. As mentioned, the ability to discuss the proposal/contract with the Contracting Officer would be extremely helpful. As such, please provide the Contracting Officer's information at your earliest convenience.

On behalf of Philips, we look forward to working with the Government to support the critical care of COVID-19 patients.

Regards,  
Trina

**Trina Alexander Eaddy**  
Senior Counsel & Compliance Officer  
Global Inclusion & Diversity Champion  
Government Solutions

Philips North America LLC, 1050 K Street N.W., Suite 900, Washington, DC 20001  
Tel: [REDACTED] Cell: [REDACTED], Email: [REDACTED]@philips.com



LETTER CONTRACT  
BETWEEN  
THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES  
  
AND  
  
PHILIPS NORTH AMERICA AND ITS AFFILIATE, RESPIRONICS, INC.

CONTRACT NUMBER \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

CONTRACT FOR: To deliver Trilogy EVO and Trilogy EV300 Ventilators (43,000 UNITS) and Consumables to manage COVID-19 patients.

DEFINITION: A letter contract is a written preliminary contractual document that authorizes the contractor to begin immediately manufacturing supplies or performing services.

I. FAR 52.216-24            LIMITATION OF GOVERNMENT LIABILITY            (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \$646,683,750.00 dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is \$323,341,875.00 dollars.

\*NOTE: The maximum liability of the Government inserted above shall be the estimated amount necessary to cover the Contractor's requirements for funds before definitization. However, it shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.

II. DEFINITIZATION SCHEDULE:

(a) Date for submission of the contractor's price proposal, required cost or pricing data, and if required, make-or-buy and subcontracting plans: 26 March 2020.

(b) Date for start of negotiations: 27 March 2020.

(c) Target date for definitization: 01 April 2020.  
(180 days after the date of letter contract above or before completion of 40 percent of the work to be performed, whichever comes first)

Letter Contract No: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ between the United States Department of Health and Human Services and Philips North America and its Affiliate, Respirationics, Inc.

### III. SPECIAL PROVISIONS:

#### A. FAR 52.216-23 EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than 26 March 2020.

Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary material.

#### B. FAR 52.216-25 CONTRACT DEFINITIZATION (OCT 1997)

(a) A Firm-Fixed Price definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a Firm Fixed Price proposal.

(b) The schedule for definitizing this contract is [01 April 2020]:

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_.

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) above, or if granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by-

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

Letter Contract No: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ between the United States Department of Health and Human Services and Philips North America and its Affiliate, Respirationics, Inc.

(2) To the extent consistent with subparagraph (c)(1) above, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

*Alternate 1* (APR 1984) In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated Firm Fixed Price in no event to exceed \$646,683,750.00.

C. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

FAR Clause 52.246-2 Inspection of Supplies – Fixed Price (August 1996)

FAR Clause 52.246-4 Inspection of Services – Fixed Price (August 1996)

FAR Clause 52.246-16 Responsibility for Supplies (April 1984)

FAR Clause 52.212-4 Contract Terms and Conditions —Commercial Items (Oct 2018)

FAR Clause 52.212-5 Contract Terms and Conditions to Implement Statutes or Executive Orders  
Commercial Items (Jan 2017)

FAR 52.211-15 Defense Priority and Allocation Requirement (Apr 2008)

FAR 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and  
Energy Program Use (Apr 2008)

D. Other clauses and provisions applicable to this letter contract are hereby incorporated - See Attachment A.

IV. ADMINISTRATION:

Purchase Request Number \_\_\_\_\_

Letter Contract No: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ between the United States Department of Health and Human Services and Philips North America and its Affiliate, Respironics, Inc.

A. The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same:

_____	\$ _____
(fund citation)	(amount)

B. The overall administrative responsibility for this contract lies in the Chief of Contracting, XXXXXXXXXXXX, , XXXXXXXXXXXX , XXXXX.

C. Payments will be made by \_\_\_\_\_

_____	Type of contract contemplated: _____
(buyer)	

This instrument has been negotiated pursuant to Section 2304(a)(2) of Title 10 U.S. Code.

Letter Contract No: \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ between the United States Department of Health and Human Services and Philips North America LLC and its affiliate Respironics, Inc.

\_\_\_\_\_  
(Contractor's Signature)    (Contracting Officer Signature)    DX  
\_\_\_\_\_  
(Priority Rating- See FAR 11.603)

\_\_\_\_\_  
(Contractor's Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip + 4)

\_\_\_\_\_  
(A/C & Telephone Number)

\_\_\_\_\_  
(Approving Officer's Signature)

\_\_\_\_\_  
(Approving Officer's Name/Title)

\_\_\_\_\_  
(Date of Contract - Today' Date)

Letter Contract No: \_\_\_\_\_ - \_\_\_\_\_ between the United States Department of Health and Human Services and Philips North America and its Affiliate, Respironics, Inc.

## ATTACHMENT A

**ARTICLE A.1. Protection Against Claims.** The parties agree that, in accordance with Title I of the Defense Production Act (50 U.S.C. § 4511 *et seq.* as implemented in 17 CFR 700.90), Philips shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this Agreement, including but not limited to any claim by any customer, private, public or governmental, including both domestic and foreign, for Philips or affiliates failure to fulfill any existing or future order for the products covered by this Agreement. The parties also agree that, to the maximum extent allowed by law, including but not limited to the authorities granted in Public Law 85-804 (50 U.S.C. § 1431 *et seq.* and Executive Order 10789, as amended), the Government shall hold Philips or its affiliates harmless from any and all claims arising under or relating to this Agreement, including but not limited to: (1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of Philips) for death, personal injury, or loss of, damage to, or loss of use of property; (2) Loss of, damage to, or loss of use of Philips property, excluding loss of profit; and (3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

**ARTICLE A.2. Excusable Delay.** The parties agree that the Philips and its affiliates shall not be liable for any default or delay in meeting the delivery dates called for in this Agreement unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics or pandemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer.

**ARTICLE A.3. Special Priorities Assistance.** When requested by Philips, the Government agrees to provide "special priorities assistance" in accordance with the authorities provided for in Title I of the Defense Production Act (codified at 15 CFR §700.50 ), including but not limited to assistance to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors, in order to allow Philips to meet the delivery schedules called for in this Agreement and further described as Exhibit A.

ARTICLE A.4 **Conditions.** Philips will manufacture and deliver the Product using commercially reasonable efforts and if delivery dates are not fulfilled there will be no penalty. Our Agreement to provide by a certain date is conditioned upon Philips and its affiliates being able to increase necessary production capabilities to be implemented as well as special priority assistance by the United States government and its agencies as described in Exhibit A.

ARTICLE A.5 **Payment Terms.** Upon receipt of the Philips invoice, Fifty Percent (50%) advance payment of the total contract value; thereafter, Philips will invoice 30 days in arrears for 50% of the previous month's billing cycle delivered quantity.

**ARTICLE A.6 DELIVERY TERMS**

Philips will deliver ventilators purchased under this agreement directly to FEMA to allocate or Philips, at its option, will arrange for drop-ship delivery to locations in the United States as specified by FEMA. In the event of drop-ship delivery, FEMA will notify Philips of the next month's shipping designations 15 days prior to the Philips intended monthly shipment date. Philips will provide intended shipment date at least 20 days in advance of such date. For drop- ship delivery, risk of loss or damage shall pass to FEMA upon delivery of ventilators to the carrier, and any loss or damage thereafter shall not relieve FEMA from any obligation hereunder.

If FEMA does not provide written shipping instructions, Philips will select the carrier and method of shipment without assuming any liability or cost. Transportation/shipping and insurance charges shall be paid by FEMA and will be collected on delivery, or if pre-paid, will be invoiced to FEMA. Philips offers variable options to increase manufacturing flexibility that will allow for a mix of units per order. The unit prices will remain in place through the life of the contract.

Delivery will be monthly beginning in March. Please see chart below

2020	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
EVO/EV300 Ventilator Distribution	100	1,100	1,300	1,500	3,500	4,800	5,700	8,000	8,000	9,000	43,000





**PHILIPS**

Ventilators

# Ventilator Proposal

## United States Government

March 24, 2020

This Proposal sets forth certain terms and conditions ("Proposed Agreement") between Philips North America LLC and its affiliates to include Respiroics, Inc. ("Philips"), having its principal place of business at 222 Jacobs Street, Cambridge, MA, USA 02141 and the U.S. Department of Health and Human Services ("HHS"); (each, a "Party," and together, the "Parties"). This proposal outlines terms and conditions of the Proposed Agreement discussed herein. It is intended to set forth material terms of such Proposed Agreement.

Points of Contact for additional information:

Mr. Nick Padula,  
Vice President, Health & Human Services  
1050 K Street N.W., Suite 900 Washington, DC 20001

[REDACTED]  
[REDACTED]@philips.com

Ms. Trina Alexander Eaddy  
Senior Counsel & Compliance Officer  
Government Solutions  
1050 K Street N.W., Suite 900 Washington, DC 20001

[REDACTED]  
[REDACTED]@philips.com

**PART I – THE SCHEDULE**  
**SECTION B. SUPPLIES OR SERVICES AND PRICES/COSTS**

**ARTICLE B.1** The purpose of this contract is to produce and deliver 43,000 ventilators and accessories to support the COVID-19 Pandemic and be provided as indicated within this proposal.

**ARTICLE B.2.** Product Descriptions

Trilogy Evo helps benefit a broad spectrum of patients, from newborns to adults. Trilogy Evo is a portable life support ventilator platform designed to stay with patients and provide consistent therapy and monitoring as they change care environments and when their condition changes. So when transitions do occur, disruptions are minimized, and the level of respiratory care remains intact.

The Trilogy EV300 ventilator delivers enhanced performance in noninvasive (NIV) and invasive (IV) ventilation allowing patients to be treated with a single device throughout their hospital stay, regardless of changing conditions. Trilogy EV300 is designed to stay with patients, saving staff time and effort as patients move between hospital departments.

Consumables beyond those included in the ventilator bundles. The additional consumables include 115,000 circuits and 30,000 filters.

<b>TOTAL CONTRACT PRICE</b>	<b>\$646,683,750.00</b>
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## SECTION C.DESCRPTION/SPECIFICATIONS/WORK STATEMENT

**PERIOD OF PERFORMANCE:** March 22, 2020 – March 21, 2021

**CONTRACT TYPE:** Firm Fixed-Price Contract

**DELIVERABLES :** 4 CLINs (see below)

### CLIN 1: Trilogy EVO

Description	Item Total
Trilogy Evo, OBM Bundle: Includes	\$15,000 x 100 units
Trilogy Evo Roll Stand	
Disp, Adult, Dual Limb Circuit, 10pk	
Disp, 22mm, Adult, Non-Htd Passive Circuit, 10pk	
External Flow Sensor Cable w/1 Adult/Ped flow sensor	
Dual Limb AEV, 10pk	
FIO2 Sensor Assembly	
Oxygen Blending Module	

Delivery	Quantity	Price
March 2020	100 Units	\$1,500,000.00
CLIN 1 Price		\$1,500,000.00

### CLIN 2: Trilogy EV300

Description	Item Total
Trilogy EV300 OBM Bundle: Includes	\$15,000 x 42,900 total units
Trilogy EV300, US	
Oxygen Blending Module (OBM)	
SPRS-2 Roll Stand, H-111 cm, EV300 -Mount Kit,Cyl mount, 108mm 4.25in(SPRS2)	
Kit, O2 Transport Cart, MTG, DISS-M Circuit Support Arm	
External Flow Sensor Cable w/1 Adult/Ped flow sensor Dual Limb AEV, 10pk	
Disp, Adult, Dual Limb Circuit, 10pk	

Disp, 22mm, Adult, Non-Htd Passive Circuit, 10pk  
Circuit pack includes filter

<u>Month of Delivery</u>	<u>Quantity</u>	<u>Price</u>
April 2020	1,100 units	\$16,500,000.
May 2020	1,300 units	\$19,500,000.
June 2020	1,500 units	\$22,500,000.
July 2020	3,500 units	\$52,500,000.
August 2020	4,800 units	\$72,000,000.
September 2020	5,700 units	\$85,500,000.
October 2020	8,000 units	\$120,000,000.
November 2020	8,000 units	\$120,000,000.
December 2020	9,000 units	\$135,000,000.
CLIN 2 Price		\$643,500,000.00

### **CLIN 3 – Circuits (Consumables)**

<b>Description</b>	<b>Item Total</b>
Disp, 22mm, Adult, Non-Htd Passive Circuit, 10pk	\$125.00 x 11,550 units
Month of Delivery	Quantity
May	1,800
June	3,750
July	6,000
Price	
	\$225,000
	\$468,750
	\$750,000
CLIN 3 Price	\$1,443,750.00

### **CLIN 4 – Filters (Consumables)**

<b>Description</b>	<b>Item Total</b>
Bacterial/Viral Filter, 10pk	\$80.00 x \$240,0000 units
Month of Delivery	Quantity
May	1000
June	1000
July	1000
Price	
	\$80,000
	\$80,000
	\$80,000
CLIN 4 Price	\$240,000.00

**TOTAL CONTRACT PRICE (CLINS 1-4)      \$646,683,750.00**

## SECTION D. PACKAGING AND SHIPPING INSTRUCTIONS

### DELIVERY INSTRUCTIONS/TERMS

Philips will deliver ventilators purchased under this agreement directly to FEMA to allocate or Philips, at its option, will arrange for drop-ship delivery to locations in the United States as specified by FEMA. In the event of drop-ship delivery, FEMA will notify Philips of the next month's shipping designations 15 days prior to the Philips intended monthly shipment date. Philips will provide intended shipment date at least 20 days in advance of such date. For drop-ship delivery, risk of loss or damage shall pass to FEMA upon delivery of ventilators to the carrier, and any loss or damage thereafter shall not relieve FEMA from any obligation hereunder.

If FEMA does not provide written shipping instructions, Philips will select the carrier and method of shipment without assuming any liability or cost. Transportation/shipping and insurance charges shall be paid by FEMA and will be collected on delivery, or if pre-paid, will be invoiced to FEMA.

Philips offers variable options to increase manufacturing flexibility that will allow for a mix of units per order. The unit prices will remain in place through the life of the contract.

Delivery will be monthly beginning in March. Please see chart below

2020	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
EVO/EV300 Ventilator Distribution	100	1,100	1,300	1,500	3,500	4,800	5,700	8,000	8,000	9,000	43,000

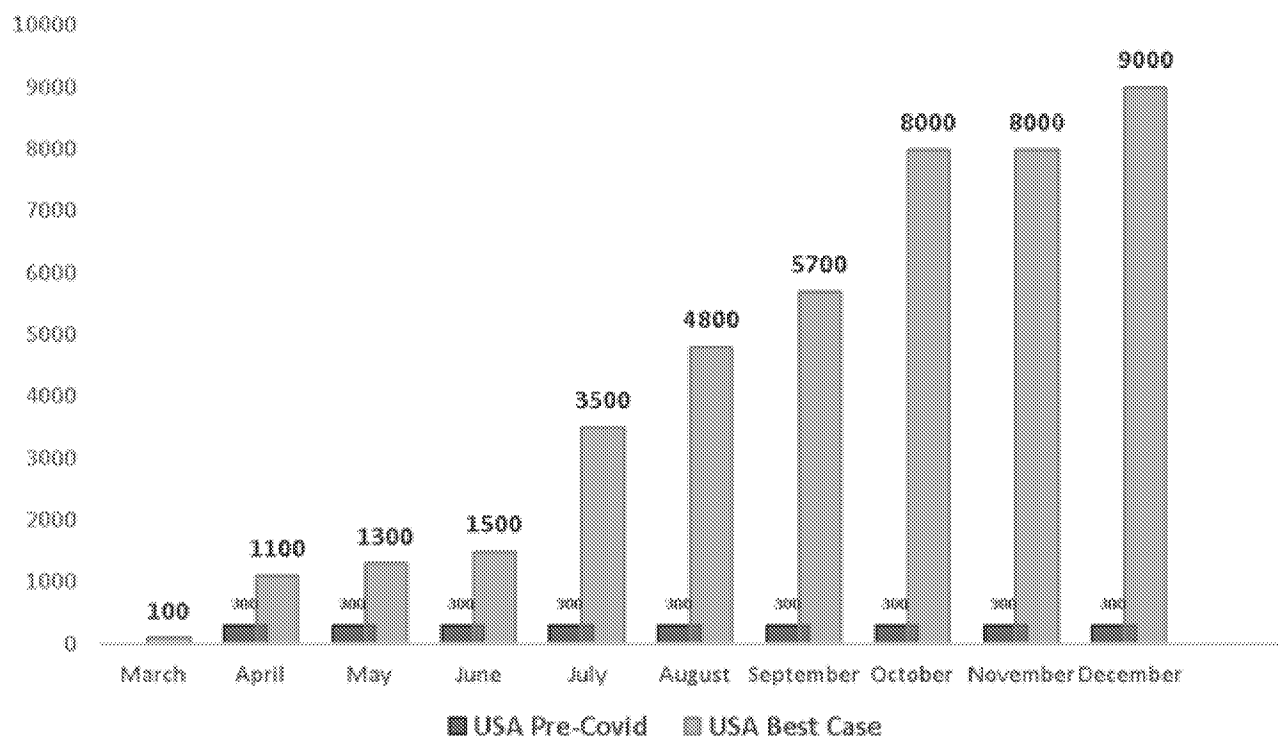


Figure 1: Ventilator Distribution Bar Chart:

## SECTION E. INSPECTION AND ACCEPTANCE

**This agreement shall fall under the following Federal Acquisition Regulations.**

FAR Clause 52.246-2 Inspection of Supplies – Fixed Price (August 1996)

FAR Clause 52.246-4 Inspection of Services – Fixed Price (August 1996)

FAR Clause 52.246-16 Responsibility for Supplies (April 1984)

## SECTION F. DELIVERIES OR PERFORMANCE

**Free on board (FOB) delivery shall fall under the following Federal Acquisition Regulations.**

FAR Clause 52.247-34 F.O.B. Destination (Nov 1991)

## SECTION G. CONTRACT ADMINISTRATION DATA (RESERVED)

## SECTION H. SPECIAL CONTRACT REQUIREMENTS

**ARTICLE H.1. Protection Against Claims.** The parties agree that, in accordance with Title I of the Defense Production Act (50 U.S.C. § 4511 *et seq.* as implemented in 17 CFR 700.90), Philips shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this Agreement, including but not limited to any claim by any customer, private, public or governmental, including both domestic and foreign, for Philips or affiliates failure to fulfill any existing or future order for the products covered by this Agreement. The parties also agree that, to the maximum extent allowed by law, including but not limited to the authorities granted in Public Law 85-804 (50 U.S.C. § 1431 *et seq.* and Executive Order 10789, as amended), the Government shall hold Philips or its affiliates harmless from any and all claims arising under or relating to this Agreement, including but not limited to: (1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of Philips) for death, personal injury, or loss of, damage to, or loss of use of property; (2) Loss of, damage to, or loss of use of Philips property, excluding loss of profit; and (3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

**ARTICLE H.2. Excusable Delay.** The parties agree that the Philips and its affiliates shall not be liable for any default or delay in meeting the delivery dates called for in this Agreement unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics or pandemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer.



ARTICLE H.3. **Special Priorities Assistance.** When requested by Philips, the Government agrees to provide “special priorities assistance” in accordance with the authorities provided for in Title I of the Defense Production Act (codified at 15 CFR §700.50 ), including but not limited to assistance to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors, in order to allow Philips to meet the delivery schedules called for in this Agreement and further described as Exhibit A.

ARTICLE H.4 **Conditions.** Philips will manufacture and deliver the Product using commercially reasonable efforts and if delivery dates are not fulfilled there will be no penalty. Our Agreement to provide by a certain date is conditioned upon Philips and its affiliates being able to increase necessary production capabilities to be implemented as well as special priority assistance by the United States government and its agencies as described in Exhibit A.

ARTICLE H.5 **Payment Terms.** Upon receipt of the Philips invoice, Fifty Percent (50%) advance payment of the total contract value; thereafter, Philips will invoice 30 days in arrears for 50% of the previous month’s billing cycle delivered quantity.

## PART II - CONTRACT CLAUSES

### SECTION I. CONTRACT CLAUSES

#### GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE SUPPLY CONTRACT

##### I.1. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

<u>FAR</u> <u>CLAUSE</u> <u>NO.</u>	<u>DATE</u>	<u>TITLE</u>
52.202-1	Nov 2013	Definitions (Over the Simplified Acquisition Threshold)
52.203-3	Apr 1984	Gratuities (Over the Simplified Acquisition Threshold)
52.203-5	May 2014	Covenant Against Contingent Fees (Over the Simplified Acquisition Threshold)
52.203-6	Sep 2006	Restrictions on Subcontractor Sales to the Government (Over the Simplified Acquisition Threshold)
52.203-7	May 2014	Anti-Kickback Procedures (Over the Simplified Acquisition Threshold)
52.203-8	May 2014	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Over the Simplified Acquisition Threshold)
52.203-10	May 2014	Price or Fee Adjustment for Illegal or Improper Activity (Over the Simplified Acquisition Threshold)
52.203-12	Oct 2010	Limitation on Payments to Influence Certain Federal Transactions (Over \$150,000)
52.203-17	Apr 2014	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (Over the Simplified Acquisition Threshold)
52.204-4	May 2011	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper(Over the Simplified Acquisition Threshold)
52.204-10	Jul 2013	Reporting Executive Compensation and First-Tier Subcontract Awards (\$25,000 or more)
52.204-13	Jul 2013	System for Award Management Maintenance
52.209-6	Aug 2013	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Over \$30,000)

52.212-4	Jan 2017	Contract Terms and Conditions – Commercial Items
52.212-5	Jan 2017	Contract Terms and Conditions to Implement Statutes or Executive Orders – Commercial Items
52.215-2	Oct 2010	Audit and Records - Negotiation [Note: Applies to ALL contracts funded in whole or in part with Recovery Act funds, regardless of dollar value, AND contracts over the Simplified Acquisition Threshold funded exclusively with non-Recovery Act funds.]
52.215-8	Oct 1997	Order of Precedence - Uniform Contract Format
52.215-10	Aug 2011	Price Reduction for Defective Certified Cost or Pricing Data (Over \$700,000)
52.215-12	Oct 2010	Subcontractor Cost or Pricing Data (Over \$700,000)
52.215-14	Oct 2010	Integrity of Unit Prices (Over the Simplified Acquisition Threshold)
52.215-15	Oct 2010	Pension Adjustments and Asset Reversions (Over \$700,000)
52.215-18	Jul 2005	Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) other than Pensions
52.215-19	Oct 1997	Notification of Ownership Changes
52.215-21	Oct 2010	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data - Modifications
52.219-8	May 2014	Utilization of Small Business Concerns (Over the Simplified Acquisition Threshold)
52.219-9	Jul 2013	Small Business Subcontracting Plan (Over \$650,000, \$1.5 million for Construction)
52.219-16	Jan 1999	Liquidated Damages - Subcontracting Plan (Over \$650,000, \$1.5 million for Construction)
52.222-19	Jan 2014	Child Labor--Cooperation with Authorities and Remedies
52.222-20	May 2014	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000
52.222-21	Feb 1999	Prohibition of Segregated Facilities
52.222-26	Mar 2007	Equal Opportunity
52.222-35	Jul 2014	Equal Opportunity for Veterans (\$100,000 or more)
52.222-36	Jul 2014	Equal Opportunity for Workers with Disabilities

<u>FAR</u> <u>CLAUSE</u> <u>NO.</u>	<u>DATE</u>	<u>TITLE</u>
52.222-37	Jul 2014	Employment Reports on Veterans (\$100,000 or more)
52.222-40	Dec 2010	Notification of Employee Rights Under the National Labor Relations Act (Over the Simplified Acquisition Threshold)
52.222-50	Feb 2009	Combating Trafficking in Persons
52.222-54	Aug 2013	Employment Eligibility Verification (Over the Simplified Acquisition Threshold)
52.223-6	May 2001	Drug-Free Workplace
52.223-18	Aug 2011	Encouraging Contractor Policies to Ban Text Messaging While Driving
52.225-1	May 2014	Buy American - Supplies
52.225-13	Jun 2008	Restrictions on Certain Foreign Purchases
52.227-1	Dec 2007	Authorization and Consent
52.227-2	Dec 2007	Notice and Assistance Regarding Patent and Copyright Infringement
52.229-3	Feb 2013	Federal, State and Local Taxes (Over the Simplified Acquisition Threshold)
52.232-1	Apr 1984	Payments
52.232-8	Feb 2002	Discounts for Prompt Payment
52.232-9	Apr 1984	Limitation on Withholding of Payments
52.232-11	Apr 1984	Extras
52.232-17	May 2014	Interest (Over the Simplified Acquisition Threshold)
52.232-23	May 2014	Assignment of Claims
52.232-25	Jul 2013	Prompt Payment
52.232-33	Jul 2013	Payment by Electronic Funds Transfer--System for Award Management
52.232-39	Jun 2013	Unenforceability of Unauthorized Obligations

<u>FAR</u> <u>CLAUSE</u> <u>NO.</u>	<u>DATE</u>	<u>TITLE</u>
52.233-1	May 2014	Disputes
52.233-3	Aug 1996	Protest After Award
52.233-4	Oct 2004	Applicable Law for Breach of Contract Claim
52.242-13	Jul 1995	Bankruptcy (Over the Simplified Acquisition Threshold)
52.243-1	Aug 1987	Changes - Fixed-Price
52.244-6	Jul 2014	Subcontracts for Commercial Items
52.249-8	Apr 1984	Default (Fixed-Price Supply and Service)(Over the Simplified Acquisition Threshold)
52.253-1	Jan 1991	Computer Generated Forms

a. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR)(48 CFR CHAPTER 3) CLAUSES:

<u>HHSAR</u> <u>CLAUSE</u> <u>NO.</u>	<u>DATE</u>	<u>TITLE</u>
352.202-1	Jan 2006	Definitions
352.203-70	Mar 2012	Anti-Lobbying
352.222-70	Jan 2010	Contractor Cooperation in Equal Employment Opportunity Investigations
352.227-70	Jan 2006	Publications and Publicity
352.231-71	Jan 2001	Pricing of Adjustments
352.242-70	Jan 2006	Key Personnel
352.242-73	Jan 2006	Withholding of Contract Payments
352.201-70	Jan 2006	Paperwork Reduction Act
352.223-70	Jan 2006	Safety and Health
352.231-70	Aug 2012	Salary Rate Limitation

**Note:** P.L. 113-76 sets forth the Salary Rate Limitation at the Executive Level II Rate, effective January 17, 2014.

See the following Web site for Executive Schedule rates of pay: <http://www.opm.gov/oca/>.

(For current year rates, click on Salaries and Wages/Executive Schedule/Rates of Pay for the Executive Schedule. For prior year rates, click on Salaries and Wages/select Another Year at the top of the page/Executive Schedule/Rates of Pay for the Executive Schedule. Rates are effective January 1 of each calendar year unless otherwise noted.)

## SECTION I.2 ADDITIONAL FAR CONTRACT CLAUSES INCLUDED IN FULL TEXT

This contract incorporates the following clauses in full text.

### A. FEDERAL ACQUISITION REGULATION (FAR)(48 CFR CHAPTER 1) CLAUSES:

#### 1. FAR Clause **52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters** (July 2013)

As prescribed in 32.706-1(b), insert the following clause:

- a. The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management (SAM) database at <http://www.acquisition.gov>.
- b. As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111- 212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consists of two segments--
  1. The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by--
    - i. Government personnel and authorized users performing business on behalf of the Government; or
    - ii. The Contractor, when viewing data on itself; and
  2. The publicly-available segment, to which all data in the non-public segment of FAPIS is automatically transferred after a waiting period of 14 calendar days, except for--
    - i. Past performance reviews required by subpart 42.15;
    - ii. Information that was entered prior to April 15, 2011; or
    - iii. Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.
- c. The Contractor will receive notification when the Government posts new information to the Contractor's record.
  1. If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to

FAPIIS.

2. The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.
  3. As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.
  - d. Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

**FAR 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use (Apr 2008)**

Any contract awarded as a result of this solicitation will be ☐DX rated order; ☐DO rated order certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and Allocations System (DPAS) (15 CFR700), and the Contractor will be required to follow all of the requirements of this regulation.

**FAR 52.211-15 Defense Priority and Allocation Requirement (Apr 2008)**

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

**FAR 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (OCT 2018)**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not



assign its rights to receive payment under this contract.

(c) *Changes*. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes*. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions*. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice*.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
  - (ii) Invoice date and number;
  - (iii) Contract number, line item number and, if applicable, the order number;
  - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
  - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
  - (vi) Terms of any discount for prompt payment offered;
  - (vii) Name and address of official to whom payment is to be sent;
  - (viii) Name, title, and phone number of person to notify in event of defective invoice; and
  - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment*.—

(1) *Items accepted*. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments

(9) The specification.

(t) [Reserved]

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference*. The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of Clause)

## **PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

### **Exhibit A**

#### **US Government Support**

##### **Trilogy EVO BoM**

- Expedite & prioritize production with US Suppliers
- Exemptions for “Stay Home” orders for employees
- Expedite & dedicated shipping logistics with US & OUS Suppliers
- Financial support for supplier capital investment

##### **Trilogy EVO Production Line Equipment**

- Expedite & prioritize long lead items with US Suppliers
- Equipment Engineers & Technicians to support equipment build in Pittsburgh
- Dedication of machine shops to support equipment build

##### **US Regulatory Support**

- **Rate Suppliers DX**
- **Supplier Component Ramp;** Philips will provide a list of critical supplier constraints
  - Reach out to the suppliers and communicate the priority of this ventilator demand
  - Provide financial assistance to expand capacity and volume
- **Production Line Ramp;** Philips is adding 5 production lines ; Test systems are the critical path constraints; Philips is building the test systems in house
  - Provide test system engineers & assembly technicians to support test system build
  - Identify potential machine shops to dedicate to the test system build
- **Production Line & Supplier Qualification;** Philips is ramping new production lines and alternative suppliers
  - Qualification requirements for process validation & supplier qualification to be built on duplication, not new.
  - Delay supplier qualification requirements , through usage of device final test
- **Production Line Ramp**
  - Identify and provide resource talent to staff the production lines
  - Create dedicated logistics lanes from suppliers to Philips to reduce lead times
  - Provide global shipping capacity and logistics (e.g., planes and ships)

- **Internal Line Duplication Compliance Requirements**
  - Eliminate or fast track 510k approvals if needed
- **3<sup>rd</sup> Party Line Duplication Compliance Requirements**
  - Eliminate the qualification requirements for new suppliers into Philips QMS (fast track)
  - Eliminate or fast track 510k approvals if needed
  - **Eliminate in-line tests for final device test & acceptance;** Philips is evaluating Essential test requirements/Essential performance requirements for ventilators (Standards) to define minimum testing Philips needs to complete
    - Reduce or waive Standards Requirements
  - **Emergency Use Authorization;** lower standard for safety and effectiveness testing for new modes or new indications
    - Invoke authorization for potential new modes or indications