



TERMS & CONDITIONS OF SYSTAIN MAINTENANCE SERVICES DELIVERY

1. SERVICES: For the covered equipment described above (the “Equipment”), OSI Hardware will provide technical support services at the level identified above and, when required, replacement of Equipment, as more particularly described in this Agreement. All additions or deletions of Equipment are subject to OSI Hardware’s approval as outlined in Section 6 below.

- a) **Technical Support:** For covered Equipment, OSI Hardware’s technical support personnel will assist you by telephone or email in diagnosing Equipment failures and in making repairs and replacing failed parts.
- b) **Equipment Replacement:** If the Equipment cannot be repaired with the assistance of OSI Hardware’s technical support personnel, OSI Hardware will ship the necessary replacement parts to you at no cost, with shipping charges prepaid. Replacement parts are provided on an exchange basis only, and replaced Equipment become the property of OSI Hardware. OSI Hardware shall only stock replacement parts in accordance with the original standard configurations for each item of Equipment, unless otherwise specified.
- c) OSI Hardware may subcontract the services to be provided by it hereunder, or portions thereof, to third-party service providers. If so subcontracted, OSI Hardware shall remain primarily responsible for providing the services.

2. LIMITATIONS: The services provided by OSI Hardware pursuant to this Agreement shall be subject to the following limitations:

- a) Technical support services and Equipment replacements due to the following causes are subject to additional charges, unless otherwise agreed to by OSI Hardware in writing: (i) your, or any third party’s negligence; (ii) Equipment misuse, neglect, mishandling or abuse, including failure to install, operate, configure, and maintain the Equipment in accordance with the specifications of the original equipment manufacturer (“OEM”); (iii) movement, transportation, or reconfiguration of the Equipment not in accordance with the OEM’s specifications; (iv) maintenance or repair of the Equipment by any party other than a properly qualified technician; (v) failure or fluctuation of electrical power, or inadequate cooling; or (vi) damage ordinarily covered by insurance including damage from accident or casualty, such as fire, flood, or natural disaster.
- b) OSI Hardware is not responsible for the replacement of consumables (e.g. ribbons, ink, batteries, and other such supplies) that are “consumed” and/or used by the Equipment and are the Customer’s sole and absolute responsibility. Requests for replacement of consumable equipment will be treated as outside of the scope of this agreement and

subject to Time and Material charges.

- c) The obligations of OSI Hardware hereunder do not apply in the event Equipment fails to perform properly or becomes incompatible due to software, firmware, or code changes.
- d) OSI Hardware's obligations hereunder do not apply to Equipment where new licenses, upgrades or software have been installed after the commencement of the term hereof unless the same have been approved by OSI in writing.
- e) OSI Hardware shall have no obligation to replace Equipment nor to compensate or reimburse Customer for licenses, upgrades or software installed by Customer on Equipment which is subsequently returned to OSI.
- f) OSI Hardware is not required to provide replacement Equipment that is identical to the Equipment replaced but may satisfy its obligations hereunder by providing replacement Equipment which offers a comparable level of functionality.
- g) OSI Hardware's technical support personnel provide technical support for hardware break-fix issues only and the services provided hereunder do not otherwise extend to addressing software or firmware issues. OSI Hardware may, at its discretion, assist the customer with the installation and configuration of publicly available software or firmware provided the customer is legally entitled to their use. The Customer represents and warrants that it has all proper level rights, title, and license to all hardware, software, and/or passwords of the Equipment accesses pursuant to the provision of the services. The Customer is solely and absolutely responsible for obtaining any and all software and firmware updates and upgrades and obtaining non-publicly available OEM Intellectual Property of all the Equipment.

3. CUSTOMER OBLIGATIONS:

- a) The Customer acknowledges that all the Equipment identified in OSI Hardware's quotation and/or SOW are completely functional at the commencement of the Services. Any Equipment discovered to be non-functional at the commencement of the Services shall be subject to Time and Material charges, payable by the Customer, in order to restore functionality to the Equipment.
- b) The Customer is responsible for maintaining proper and accessible backups of all data, software, and firmware for the Equipment. OSI Hardware shall not be responsible for any data losses or interruption of services or access to systems experienced by the Customer.
- c) The Customer shall provide OSI Hardware with all detailed hardware and software configurations for the Equipment required by the Company and suitable for determining the exact types and quantities of Field Replaceable Units (i.e. spare parts) ("FRU") required to meet

the Customer's Services requirements. If the Customer is unable to provide the required information to the Company, the Company shall stock the required FRUs on a best effort basis.

- d) The Customer shall provide OSI Hardware, its employees, agents, consultants or subcontractors with access to the Customer's premises, office accommodation and any other facilities as reasonably required by the Company to provide the Services. The Customer shall provide the Company with such information and material which may reasonably be required by the Company to provide the Services and ensure that such information is accurate in all material respects. The Customer represents and warrants that all of the information provided by the Customer to the Company (including without limitation personal particulars and contact information) is accurate and complete.
- e) If OSI Hardware's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer's Default"), OSI Hardware shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer's Default, and to rely on the Customer's Default to relieve it from the performance of any of its obligations to the extent the Customer's Default prevents or delays OSI Hardware's performance of any of its obligations for the Services; and OSI Hardware shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from OSI Hardware's failure or delay to perform any of its obligations for the Services as set out in this Clause. Further, the Customer shall reimburse OSI Hardware upon demand in Writing for any costs or losses sustained or incurred arising directly or indirectly from the Customer's Default.
- f) The Customer agrees that it shall at all times comply with all applicable laws.

4. APPOINTMENT OF OSI HARDWARE AS AGENT:

The Customer appoints OSI Hardware as its authorized agent representing the Customer, as required, while conducting certain business activities relating to the support and maintenance of the Equipment. The Customer grants OSI Hardware the authorization to facilitate any hardware warranty support with the Original Equipment Manufacturer ("OEM"). The Customer further grants OSI Hardware the authorization to act on the Customer's behalf with all the rights and privileges entitled to the Customer by the OEM, including, hardware warranty services, software patch management and application, and any other service, including access to OEM's proprietary information to which the Customer is entitled. OSI Hardware and the Customer agree that the same protections and confidentiality provided by Customer to the OEM will also be provided by the Company, acting on the Customer's behalf. No rights or license are transferred or assigned by these Conditions. OSI Hardware is simply designated as a *bona fide* agent to act on the Customer's behalf to the OEM in order to provide the Services for the Equipment.

5. TERM:

This Agreement shall be for the initial term stated above. Upon the expiration of the initial term, this Agreement shall automatically renew for successive terms of one (1) year each unless either party notifies the other in writing of its intent not to renew, at least thirty (30) days prior to the expiration of the then-current term. OSI Hardware may adjust the service fee payable during any renewal term, which fee shall be reflected in the invoice provided for under Section 6 below. Either party may terminate this Agreement upon thirty (30) days written notice in the event of a material breach hereof by the other party, provided that such breach has not been cured within thirty (30) days after delivery of said notice.

6. FEES:

- a) The price of the Services shall be as set forth in OSI Hardware's quotations and/or SOW for the Order. OSI Hardware reserves the right, by giving reasonable notice to the Customer in Writing at any time before the Services delivery, to increase the price of the in Services in an Order to reflect any increase in the cost to OSI Hardware which is due to any factor beyond the control of OSI Hardware (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the OSI Hardware adequate information or instructions.
- b) The Customer may add equipment to support at any time during the duration of this agreement, subject to OSI Hardware's quotation and/or SOW for the Order. Additionally, the Customer may remove equipment from support if the equipment is decommissioned and no longer in use. Equipment removals require at least thirty days' advance notice before taking effect and must not represent more than 20% of the total value of the existing contract. Customer will receive a pro rata credit for any fees paid in advance for removed equipment.
- c) OSI Hardware shall be entitled to render an invoice to the Customer in respect of the Services, at any time on or after completion of the Services. Unless otherwise states on the invoice, payment of the Customer's invoices are net due in full within 30 days of the invoice date. The time of payment shall be of essence under these Conditions.
- d) All fees provided under an Order are exclusive of and do not include any and all taxes and duties, however designated or levied, including, without limitation, any personal property, retail sales, goods and services, use or value added taxes in force now or in the future. Each invoice rendered by OSI Hardware to the Customer will state separately the applicable taxes owed by Customer.
- e) If the Customer fails to make any payment on the due date, then without prejudice to any other rights or remedies available to OSI Hardware, OSI Hardware shall be entitled to:

- a. cancel these Conditions or suspend any further performance of any Services for the Customer until after payment has been received by OSI Hardware;
- b. appropriate any payment made by the Customer (under any other Contract between the Customer and OSI Hardware) for the Services as the OSI Hardware may think fit (notwithstanding any purported appropriation by the Customer); and
- c. charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4% per annum above OSI Hardware's current bank's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

7. TERMINATION:

- a) **Termination in case of Bankruptcy:** OSI Hardware and the Customer shall each have the right at their option to terminate these Conditions and all Services thereunder by giving notice to the other in writing in the event the other shall be adjudicated bankrupt or shall petition for consent to any relief under any bankruptcy, reorganization, receivership, liquidation, compromise, or any moratorium statute, whether now or hereafter in effect, or shall petition for the appointment of a receiver, liquidator, trustee, or custodian for all or a substantial part of its assets, or if a receiver, liquidator, trustee, or custodian is appointed for all or a substantial part of its assets and is not discharged within thirty (30) days after the date of such appointment.
- b) **Curable Events of Termination:** Either party shall have the right to terminate these Conditions and all Services thereunder by giving notice in Writing to the other party upon any default in the performance or breach of these Conditions or any provision in the Company's quotation and/or SOW issued pursuant to these Conditions if the other party fails to remedy or substantially begin to cure such breach within thirty (30) days of receipt of notice of such breach.
- c) **Termination Notice:** The notice of election to terminate these Conditions shall be in Writing and shall state the grounds upon which termination is based.
- d) **Effect of Termination:** Termination of these Conditions does not limit either party's right to obtain injunctive relief and/or other available remedies. Termination does not relieve either party's obligations to pay all fees that accrued prior to termination. In the event of termination pursuant to Clause 7.a or 7.b, the Customer shall be entitled to a pro-rata refund of any fees previously paid by the Customer in advance for Services which have not been rendered.

8. WARRANTIES:

- a) OSI Hardware warrants that the Services shall be performed in a professional and workmanlike manner, by qualified and competent personnel in accordance with generally accepted industry standards.
- b) Except for the warranty set forth in Clause 8.a, OSI Hardware disclaims any and all warranties of any kind whether express, implied, or statutory including, without limitation, the implied warranties of title, accuracy, completeness, non-infringement, merchantability, satisfactory purpose, and fitness for a particular purpose.

9. RELATIONSHIP:

In the performance of these Conditions, both parties shall be deemed to be acting in the capacity of an independent contractor with respect to the other. Neither party shall be deemed to be a partner of nor joint venture with the other, and the employees and agents of one party engaged in performing any services hereunder shall not be deemed to be the employees or agents of the other.

10. LIABILITY:

- a) In no event shall either party have any liability for loss of profits, indirect, special, incidental, or consequential damages, subject to either party's gross negligence or willful misconduct that causes personal injury or death or causes damages to tangible property.
- b) Each party's liability under these Conditions shall not exceed the actual annual fees paid thereunder.
- c) Each party agrees to indemnify, defend and hold harmless the other party and each of their respective subsidiaries, affiliates, directors, officers, employees, shareholders, members, consultants, agents and other owners from and against any and all losses, liabilities, claims, obligations, costs, expenses, made by a third party arising out of or in connection with any breach of any warranties (including those stated in Clause 7.1), representations and obligations of the other party arising out of these Conditions.
- d) Each party agrees to defend and hold the other party, its officers, directors, employees, agents, and assigns harmless from any claims or liabilities (a) due to any voluntary or involuntary act or omission of a party or any employee or agent of that party including, but not limited to, any judgments, administrative fines, or court costs assessed against the party by reason of error, omission or negligence or (b) arising out of noncompliance with local, state, and federal statutes, laws, ordinances, or regulations.

11. FORCE MAJEURE:

- a) Neither OSI Hardware nor the Customer shall be liable for non-performance or delay of performance under these Conditions should such non-performance or delay arises, directly or indirectly, out of an event of Force Majeure. If a Force Majeure event occurs, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for so long as such circumstances prevail.
- b) If an event of Force Majeure occurs by reason of which a party is unable to perform its obligations under these Conditions (or any of them), such party shall inform the other party as soon as reasonably practicable thereafter of the occurrence of that event of Force Majeure and shall use all reasonable endeavours to mitigate any delay or interruption to the Services.
- c) If either party is unable to perform any of its obligations under these Conditions as a result of the continuing occurrence of an event of Force Majeure for a continuous period of more than six (6) months, or such other period as mutually agreed upon by both parties, and such event of Force Majeure is of such severity so as to frustrate the intention of these Conditions, then either party may, by written notice, terminate these Conditions, and neither of the parties hereto, save for any antecedent breaches, shall be liable to the other.
- d) For the avoidance of doubt, the parties shall continue to perform those parts of the obligations not affected, delayed or interrupted by an event of Force Majeure and such obligations shall continue in full force and effect subject to the termination of these Conditions as provided for in Clause 11.c.

12. CONFIDENTIALITY

OSI Hardware and the Customer understand and agree that the information provided to each other pursuant to these Conditions is confidential in nature, including the existence of this relationship. Each party agrees to treat all information received from the other party with the same degree of care and confidence as it treats its own confidential information, to use it only for the business purposes under these Conditions and to not disclose it to any third party without the prior written consent of the disclosing party. Under no circumstances shall the Customer disclose any of the Company's financial information, pricing, service methods, or procedures to any third party. In the event disclosure is sought pursuant to subpoena, or other legal process, the recipient of such a request shall notify the disclosing party and cooperate with any attempt to protect the disclosure of confidential information by the disclosing party.

13. NON-SOLICITATION

The Customer and OSI Hardware agree that during the term of their relationship and for a period of one (1) year following the termination of these Conditions that they shall refrain from directly or indirectly hiring, soliciting, or seeking to hire any employee of the other, or in any manner attempting, directly or indirectly, to influence, induce, or encourage any employee to leave the employ of the Customer or OSI Hardware (as the case may be), and that they shall refrain from disclosing the identity and job titles of each other's employees to any third party. This provision does not restrict any person or party from responding to an open advertisement or solicitation of employment or OSI Hardware or the Customer from hiring a person responding to such open advertisement or solicitation.

14. GOVERNING LAW AND VENUE

- a) These Conditions shall be governed and interpreted under the laws of the State of California in the United States of America without reference to its conflicts of law rules or doctrine and the parties expressly agree that any dispute arising under these Conditions or any of OSI Hardware's quotation and/or SOW or PO issued pursuant to these Conditions shall be heard in a court of competent jurisdiction in the State of California.
- b) Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the State and federal courts located in the State of California. Each of the Parties irrevocably and unconditionally waives any objection that it may have to the laying of venue of any suit, action, or proceeding arising out of or relating to these Conditions or any of the Company's quotation and/or SOW or PO issued pursuant to these Conditions in the state and federal courts located in the State of California. Each of the Parties irrevocably waives the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

15. GENERAL

- a) Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this

- provision to the party giving the notice.
- b) OSI Hardware may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under these Conditions and may subcontract or delegate in any manner any or all of its obligations under these Conditions to any third party.
 - c) The Customer shall not, without the prior written consent of OSI Hardware, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under these Conditions.
 - d) No waiver by OSI Hardware of any breach of these Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
 - e) Except as otherwise provided herein, all costs and expenses incurred in connection with these Conditions and the transactions contemplated hereby will be paid by the party incurring such costs and expenses.
 - f) In the event any party instigates litigation or any proceeding to enforce or protect its rights under these Conditions, the party substantially prevailing in any such litigation or proceeding shall be entitled, in addition to all other relief, to reasonable attorneys' fees, out-of-pocket costs and disbursements whether such sums are expended with or without suit, at trial, in a bankruptcy proceeding or on appeal.
 - g) These Conditions constitutes the entire agreement between OSI Hardware and the Customer and supersedes all other prior agreements, representations and/or understandings, both written and oral, between the parties with respect to the transactions contemplated hereby. There are no restrictions, agreements, promises, warranties, covenants, or undertakings with respect to the transactions contemplated hereby other than those expressly set forth herein.
 - h) These Conditions are not intended to and shall not confer upon, any other party other than the parties hereto, any rights or remedies with respect to the subject matter hereof.
 - i) If any one or more of the provisions of these Conditions shall be held to be invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions of these Conditions shall not be affected thereby. To the extent permitted by applicable law, each party waives any provision of law that renders any provision of these Conditions invalid, illegal or enforceable.
 - j) No action, regardless of form, arising out of the transactions under these Conditions may be brought by any party more than one (1) year after the cause of action has accrued.
 - k) OSI Hardware may from time to time vary or amend these Conditions by posting the amended Conditions at this site. Any use of the Services after the publication of the amended Conditions will be deemed to be acceptance of the amended Conditions by the Customer. If the Customer does not agree to the amended Conditions, the Customer may terminate the Services and/or any Order with thirty (30) days' notice to OSI Hardware in Writing.