



GENERAL TERMS AND CONDITIONS OF MAINTENANCE SERVICES

1. Applicability. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale by Motus GI, Inc. ("**Seller**") of maintenance services ("**Maintenance Services**") in relation to Seller goods and/or equipment (and the software provided therewith, if any) ("**Goods**") to the buyer identified on Seller's Sales Order ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Maintenance Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The accompanying Sales Order and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Definitions. Capitalized terms used in this Agreement have the meanings set forth below or otherwise in this Agreement.

(a) "**Deliverables**" means the Maintenance Releases, Documentation and any other work product that Seller provides or makes available to Buyer in connection with the Maintenance Services.

(b) "**Documentation**" means any and all manuals, instructions, specifications and other documents and materials that Seller provides or makes available to Buyer in any medium and which describe the functionality, components, features or requirements of the Goods, including any one or more of the installation, configuration, integration, operation, use, support or maintenance thereof.

(c) "**Error**" means a reproducible failure of the Goods to perform in substantial conformity with the specifications set forth in the Documentation, whose origin can be isolated to a single cause.

(d) "**First Line Support**" means, in connection with the identification, diagnosis and correction of Errors, the provision of: (i) telephone and/or e-mail assistance (as; and (ii) access to technical information on Seller's website for proper use of the Goods.

(e) "**Incident**" means a support request that begins when Buyer contacts Seller to report one specific Error and ends when Seller either: (i) Resolves the Error; or (ii) determines in its reasonable discretion that the Error cannot be Resolved.

(f) "**Maintenance Release**" means any update, upgrade, release or other adaptation or modification of the Goods, including any updated Documentation, that Seller may provide to Buyer from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Goods, but does not include any New Version.



(g) **"New Version"** means any new version of the Goods that Seller may from time to time introduce and market generally as a distinct good and/or equipment and which Seller may make available to Buyer at an additional cost under a separate written agreement.

(h) **"Resolve"** means the provision of: (i) Services that, in Seller's reasonable discretion, corrects the Error; (ii) information to Buyer that corrects the Error; (iii) information to Buyer on how to obtain a solution that corrects the Error; (iv) notice to Buyer that the Error is caused by a known, unresolved issue or an incompatibility issue with the Goods; (v) information to Buyer that identifies the Error as being corrected by upgrading to a newer release of the Goods; or (vi) notice to Buyer that the Error has been identified as arising out of or resulting from a Service Exception.

(i) **"Respond"** means Seller's initial communication with Buyer, whether by telephone, e-mail or otherwise, acknowledging Buyer's request for Services in connection with a specific Error.

(j) **"Second Line Support"** means, in connection with the identification, diagnosis and correction of Errors, the provision of on-site technical support at Buyer's premises.

3. Performance of Maintenance Services.

(a) Subject to these Terms, during the Term, Seller will provide Maintenance Services to Buyer as set forth in this Section 3. During the Term, Seller will use commercially reasonable efforts to Resolve any Incidents reported by Buyer as follows: (i) Seller will provide reasonable and customary support to ensure quality patient care and staff training; (ii) Seller, in its reasonable discretion, will determine the amount of time it will need to spend to attempt to Resolve any specific Incident; (iii) Seller will initially provide First Line Support to Buyer to attempt to Resolve the reported Incident; and (iv) Seller will subsequently provide such, if any, Second Line Support as Seller, in its reasonable discretion, deems necessary to attempt to Resolve the Incident.

(b) During the Term, Seller will provide Buyer with Maintenance Releases that Seller may from time to time introduce and provide to its customers similarly situated to Buyer at no additional cost. Buyer does not have any right under or in connection with the Agreement to receive any New Versions that Seller may, in its sole discretion, release from time to time.

(c) Seller has the sole right to determine, in its reasonable discretion, what constitutes an Incident and when an Incident is deemed to be Resolved. Seller will use commercially reasonable efforts to Resolve an Incident but does not guarantee that it will be able to Respond or Resolve an Incident within any specific time period. Seller will provide on-site Second Line Support only at agreed upon facilities during normal business hours, unless otherwise agreed to by Seller in writing. Seller is not responsible or liable for any delay or failure of performance caused in whole or in part by any delay or failure to perform any of Buyer's obligations under the Agreement or any other agreement between Buyer and Seller (each, a **"Buyer Failure"**).

(d) Seller has no obligation to provide Maintenance Services relating to Errors that, in whole or in part, arise out of or result from any of the following (each, a **"Service Exception"**): (i) Goods, or the media on which a Good is provided, that is modified or damaged by Buyer or any third party; (ii) any operation or use of, or other activity relating to, the Goods other than as specified in the Documentation, including any incorporation in the Goods of, or combination, operation or use of the



Goods in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Buyer's use in the Documentation; (iii) any third-party materials; (iv) any negligence, abuse, misapplication or misuse of the Goods, including any Buyer use of the Goods other than as specified in the Documentation; (v) any Buyer Failure, including Buyer's failure to promptly install any Maintenance Release that Seller has previously made available to Buyer; (vi) the operation of, or access to, Buyer's or a third party's system or network; (vii) any relocation, installation or integration of the Goods other than by Seller personnel; (viii) any breach of or noncompliance with any provision of the Agreement or any other agreement between Buyer and Seller; or (ix) any Force Majeure Event (as defined below), including abnormal physical or electrical stress.

4. Buyer Obligations. Buyer shall immediately notify Seller of any Error and provide Seller with reasonable detail of the nature and circumstances of the Error. Buyer shall comply with the Agreement and all other agreements between Buyer and Seller. Buyer shall use the Goods solely in accordance with the Agreement and the Documentation. Buyer shall set up, maintain and operate in good repair and in accordance with the Documentation all environmental conditions and components, including all networks, systems and hardware, in or through which the Goods operate and/or the Buyer accesses or uses any of the Maintenance Services. In connection with the performance of the Maintenance Services, Buyer shall provide Seller with all such cooperation and assistance as Seller may reasonably request or otherwise may reasonably be required to enable Seller to perform its obligation and exercise its rights under and in accordance with the Agreement. Buyer shall provide Seller with all information reasonably requested by Seller from time to time relating to Buyer's use of the Goods, Maintenance Services or Deliverables. Except as otherwise specified in these Terms, Buyer must run only the current release level of the Goods that Seller has made available to its customers and Buyer shall install all Maintenance Releases as soon as reasonably practicable from the date they are made available by Seller.

5. Confidentiality.

(a) In connection with the Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). "**Confidential Information**" means the information in any form or medium (whether oral, written, electronic or other) that due to the nature of its subject matter or the circumstances surrounding its disclosure would reasonably be understood to be confidential or proprietary. Confidential Information does not include information that: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) was or becomes generally known by or available to the public other than by the Receiving Party's or any of its personnel's noncompliance with the Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; (iv) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

(b) The Receiving Party shall: (i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with the Agreement; (ii) not disclose or permit access to Confidential Information other than to its personnel who: (A) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement; (B) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section; and (C) are bound by confidentiality and restricted use obligations at least as protective of the



Confidential Information as the terms set forth in this Section; (iii) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; (iv) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information; and (v) ensure its personnel's compliance with, and be responsible and liable for any of its personnel's non-compliance with, the terms of this Section.

6. Fees. Buyer shall purchase the Maintenance Services at the prices (the "**Prices**") set forth in the Sales Order. The Prices are net of discounts provided at the time of purchase. Buyer must: (a) claim the value of all discounts in Buyer's fiscal year earned or the immediately following fiscal year; (b) properly report and appropriately reflect discounts in Medicare/Medicaid cost reports and all claims for payment filed with third party payors as required by law or contract; and (c) provide agents of the United States or a state agency with access to all information from Seller concerning discounts upon request. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

7. Payment Terms. Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the performance of any Maintenance Services if Buyer fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

8. Intellectual Property Rights. Buyer acknowledges and agrees that: (a) the Deliverables are licensed, not sold, to Buyer by Seller and Buyer does not and will not have or acquire under or in connection with this Agreement any ownership interest in the Deliverables or in any related intellectual property rights; (b) Seller and its licensor(s) are and will remain the sole and exclusive owners of all right, title and interest in and to the Deliverables, including all intellectual property rights relating thereto; and (c) Buyer hereby unconditionally and irrevocably assigns to Seller (or Seller's designee) its entire right, title and interest in and to any intellectual property rights that Buyer may now or hereafter have in or relating to the Deliverables (including any rights in derivative works or patent improvements relating to them), whether held or acquired by operation of law, contract, assignment or otherwise. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Buyer or any third party any intellectual property rights or other right, title or interest in or to any of the Deliverables.

9. Term and Termination.



(a) The initial term of this Agreement commences on the date of the Sales Order and will continue in effect for one year from such date unless terminated earlier pursuant to any of the Agreement's express provisions ("Initial Term"). This Agreement will automatically renew for additional successive one-year terms unless earlier terminated pursuant to any of the Agreement's express provisions or either party gives the other party written notice of non-renewal at least 60 days prior to the expiration of the then-current term (each, a "Renewal Term" and together with the Initial Term, the "Term").

(b) This Agreement may be terminated at any time: (i) by Seller, effective on written notice to Buyer, if Buyer fails to pay any amount when due under this Agreement or any other agreement between Buyer and Seller where such failure continues more than 10 days' after Seller's delivery of written notice thereof; (ii) by either party, effective on written notice to the other party, if the other party materially breaches this Agreement and such breach is incapable of cure or being capable of cure remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; or (iii) by Seller, effective immediately, if Buyer is dissolved or liquidated or takes any corporate action for such purpose, becomes insolvent or is generally unable to pay its debts as they become due, becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

(c) On the expiration or earlier termination of this Agreement, (i) all rights, licenses and authorizations granted to Buyer hereunder will immediately terminate and Buyer will immediately cease all use of and other activities with respect to Seller's Confidential Information and the Deliverables, and (ii) all amounts payable by Buyer to Seller of any kind under this Agreement are immediately payable and due no later than thirty (30) days after the effective date of the expiration or termination.

10. Limited Warranty.

(a) Seller warrants to Buyer that it shall perform the Maintenance Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

(b) **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 10(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE MAINTENANCE SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE; IT BEING UNDERSTOOD THAT ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.**

(c) Seller shall not be liable for a breach of the warranties set forth in Section 10(a) unless: (i) Buyer gives written notice of the defective Maintenance Services, reasonably described, to Seller within 14 days of the time when Buyer discovers or ought to have discovered the defect; and (ii) Seller reasonably verifies Buyer's claim that the Maintenance Services are defective.

(d) Subject to Section 10(c) above, with respect to any Maintenance Services subject to a claim under the warranty set forth in Section 10(a), Seller shall, in its sole discretion, (i) repair or re-



perform the applicable Maintenance Services or (ii) credit or refund the Prices of such Maintenance Services at the pro rata contract rate. **THE REMEDIES SET FORTH IN THIS SECTION 10(d) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 10(a).**

11. Limitation of Liability. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE MAINTENANCE SERVICES SOLD HEREUNDER.**

12. Acknowledgements and Covenants. Buyer acknowledges and agrees that neither Buyer nor any physician, nurse or other Health Care Professional (as defined by the AdvaMed Code of Ethics on Interactions with Health Care Professionals) affiliated with Buyer has or will receive any reimbursement or other payment from any governmental or third party payor for the Maintenance Services and that none of Medicare, Medicaid, any of their state equivalents or any other governmental entity is or will be providing separate reimbursement or otherwise making separate payment for any of the Maintenance Services. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits required to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the receipt of the Maintenance Services under this Agreement. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Maintenance Services.

13. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay by either party in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege by either party hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege of such party.

14. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage (each, a "**Force Majeure Event**").

15. Governing Law and Jurisdiction. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Florida without giving



effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Florida. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Florida in each case located in the City of Fort Lauderdale and County of Broward, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

16. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

17. Miscellaneous. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Intellectual Property Rights, Governing Law, Submission to Jurisdiction and Miscellaneous. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.