

## **COGENTIX MEDICAL EQUIPMENT SERVICE AGREEMENT – for non-US based customers**

This Equipment Service Agreement (this "Agreement") is by and between Cogentix Medical, Inc., a Delaware (U.S.A.) corporation, having a place of business at 5420 Felll Road, Minnetonka, MN 55343 ("CGNT") and the non-US based customer who purchased the Service Agreement ("Customer"). The name of the Customer and the effective date of this Agreement is the customer name and date notated on the service invoice.

### **Recitals**

- A. CGNT is engaged in the supply of certain medical equipment and also supplies services and repairs for the medical equipment.
- B. Customer desires CGNT to supply repair services for equipment specified herein.

### **Agreement**

In consideration of the matters stated in the Recitals hereto and the mutual covenants contained in this Agreement, the parties agree as follows:

## **1. DEFINITIONS**

When used in this Agreement, each of the following terms shall have the definition set out below:

Agreement: means this agreement, together with all Exhibits, which are attached hereto and which are an integral part hereof. The Agreement becomes effective after the Customer issued a purchase order for the service agreement, and CGNT issued an invoice for the service agreement.

Authorized Service Personnel: means CGNT representatives, its affiliates, or subcontractors hired to provide service support including but not limited to Endoscopy support specialists.

Cogentix Plan: means the specified services herein, which CGNT, or its affiliates, shall perform relating to the Equipment listed in the service invoice.

Coverage Term: shall begin on the Effective Date and will end on the date set forth on the service invoice.

Equipment: means CGNT's products and the supplies related thereto, as listed in the service invoice.

## **2. COVERAGE TERMS AND PROCEDURES**

- A. **COGENTIX PLAN.** Subject to the additional terms and conditions of this Agreement, for the Coverage Term CGNT, through its Authorized Service Personnel, shall perform the following services which entails:
  - 1. Full repair coverage for all agreed upon Equipment;
  - 2. Repairs finished within 14 business days after Equipment arrival and estimation at CGNT for general repairs;
  - 3. Training and support provided by CGNT's Authorized Service Personnel via telephone.
- B. **PROCEDURES.**

1. **Notification.** Notification. Customer shall notify CGNT of the need for technical support or repair by calling with, or emailing CGNT Customer Service a completed Incident Report Form found at <http://www.cogentixmedical.com/customer-care/returns/incident-report> within twenty-four hours of becoming aware of the problem. CGNT may request additional details of the issue, and if the Incident Report does not include required information. CGNT shall then prepare and provide a "Returned Material Authorization" number to Customer, which must be included with the returned Equipment. Customer agrees to not return the Equipment without first obtaining a "Returned Material Authorization" number from CGNT.
  2. **Repair.** CGNT shall provide all parts and labor necessary to complete the repair to its then-current specifications or replace at CGNT's discretion. CGNT reserves the right to use qualified, quality-assured reconditioned, refurbished, and/or serviceable used parts for repairs hereunder.
- C. **EXCEPTIONS.** This Agreement shall not cover:
1. Defects or damage to the Equipment resulting from use of non-CGNT brand or unauthorized accessories, consumables, or supplies deemed as unacceptable or incompatible by CGNT.
  2. Defects or damage from non-approved reprocessing methods or from Customer's failure to comply with Section 2.E.
  3. EndoSheath® Technology or any other consumables and supplies, including common replacement items such as cables, filters, connectors, lamps, and plugs.
  4. Any components, parts, and materials not manufactured or distributed by CGNT, not labeled with the CGNT brand, or not installed by CGNT.
  5. Any Equipment which has been disassembled, repaired, tampered with, altered, changed, or modified by persons other than Authorized Service Personnel.
  6. In the interest of safety for the Customer and the patient, CGNT will not perform partial repairs or accept partial repair requests.
  7. Return of the equipment will be at the Customer's expense if the problem is caused by one of the issues above
- D. **PREVENTIVE MAINTENANCE.** Authorized Service Personnel shall be allowed to visit the Customer's site as often as reasonably determined by CGNT during the Coverage Term for the purpose of inspecting and testing all Equipment to determine if any repair or maintenance is required or recommended. If any repair or maintenance is required or recommended, the Equipment will, at CGNT's sole and absolute discretion, be shipped to CGNT's Service Center for repair and service. Additionally, the Customer agrees to provide time with the Customer's staff for CGNT's Authorized Service Personnel to educate the Customer and its employees on the proper care and maintenance of the Equipment.
- E. **CUSTOMER OBLIGATIONS.**
1. The Customer must follow all cleaning, reprocessing, operating, and maintenance procedures for the Equipment, as described in CGNT's user's manuals and in accordance with all applicable federal, state and local laws. In compliance with OSHA blood borne pathogen regulations and other applicable federal, state, and local regulations, any Equipment that comes into contact with potentially infectious material must be reprocessed and in adequate packaging materials before being sent to CGNT.
  2. The Customer will not clinically utilize any Equipment that is damaged or malfunctioning in any way.

3. The Customer must provide Authorized Service Personnel with access to the Equipment or any Loaner Equipment during the days and times agreed upon by both parties within normal business hours. Further, Customer must provide any reasonable assistance for diagnosing and correcting Equipment problems by telephone.
4. The Customer assumes the risk of loss or damage to Equipment while Equipment is in transit to and from the Customer's facility to CGNT's service facilities. CGNT assumes the risk of loss or damage upon acceptance of delivery of the Equipment.

#### F. OBSOLETE, PREVIOUSLY PURCHASED EQUIPMENT.

1. **Obsolete Equipment.** If CGNT determines that Equipment covered under this Agreement becomes obsolete and thus is no longer capable of being serviced under this Agreement, CGNT will perform the following:
  - a. CGNT shall so notify the Customer immediately.
  - b. The obsolete Equipment shall be removed from the coverage list.
  - c. The overall price of the Agreement will be adjusted, on a pro rata basis, to reflect the discontinuation of services for such obsolete Equipment. The aforementioned adjustment to the overall price will be CGNT's sole obligation and the Customer's exclusive remedy for the discontinuation of services for such obsolete Equipment.
2. **Previously Purchased/Currently Owned Equipment.** This Agreement covers only the Equipment that is newly manufactured by CGNT, repaired by CGNT under this Agreement, or previously purchased CGNT Equipment that is in proper working condition and meets standard performance criteria. To establish proper working condition of previously purchased Equipment currently in clinical use, an initial evaluation of the Equipment by CGNT is required. Upon evaluation, should the Equipment need repairs necessary to return the Equipment to standard performance criteria, these repairs must be completed before the Agreement becomes effective, and the Customer will be responsible for the payment separately from the payment for this Agreement.

### 3. PAYMENT

The purchase price for the Cogentix Service Contract Plan is included in the sales invoice. Payment for the full plan is due Net 30 upon invoice. The failure to pay any invoice when due shall constitute a material breach of this Agreement and CGNT's obligation under this Agreement to perform repair and maintenance services will be suspended until all required payments have been made.

### 4. TERMINATION

Either party may terminate this Agreement at any time for cause upon thirty (30) days prior written notice to the other party, in the event that the other party materially breaches this Agreement and such breach has not been cured during the subsequent 30-day period. The Customer acknowledges that any failure to make a payment when due that is not cured within the 30-day period will be deemed a material breach by the Customer. Multiple failures by the Customer to make payments when due, even if cured, will also be deemed a material breach by the Customer.

### 5. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights relating to CGNT, the Equipment, the Loaner Equipment and this Agreement, including all names, trademarks, copyrights, patents, mask works, trade secrets, know-how, technology, computer software and related

documentation and source code and other intellectual property rights, are and shall remain the property of CGNT and nothing in this Agreement shall be deemed to grant to Customer a license or other right to use CGNT's intellectual property.

## 6. GENERAL

- A. **AUTHORIZATION.** The Customer acknowledges that, when entering into this Agreement, CGNT has relied upon Customer's representation that the Equipment and the Loaner Equipment will be used only by Customer and only for business purposes. The Customer represents that it has the power to enter into this Agreement and that the person executing this Agreement on behalf of the Customer has been duly authorized and has all required corporate approvals.
- B. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof and supersedes any prior written or verbal agreements or understandings in connection herewith. No amendment, waiver or modification hereto or hereunder shall be valid unless in writing and signed by an authorized signatory of each of the parties hereto. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to this Agreement and their respective successors and permitted assigns.
- C. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the local laws of the State of Minnesota, without regard to conflicts of law provisions and not including the provisions of the 1980 U.N. Convention in Contracts for the International Sale of Goods. Customer irrevocably consents, and submits to the jurisdiction of the Federal and State courts of and located in the State of Minnesota. Customer will not commence or prosecute any suit, claim, or proceeding arising under this Agreement other than in the courts identified in the preceding sentence. Any remedy of CGNT set forth in this Agreement is in addition to any other remedy afforded to CGNT under this Agreement, any other contract, by law or otherwise.
- D. **LIABILITY.** CGNT shall not be liable for any loss or damage caused by delay in furnishing the products or services (including Equipment and Loaner Equipment). In no event shall CGNT be liable for any special, consequential, incidental, punitive, indirect or similar damages (including, without limitation, lost profits, loss of use, loss of revenue and lost data) arising out of this Agreement (whether for breach of contract, tort, negligence or other form of action), or its cancellation, irrespective of whether the Customer has been advised of the possibility of any such loss or damage. In no event shall CGNT be liable for any damages under or arising out of this Agreement in excess of the aggregate amounts actually paid by the Customer to CGNT under this Agreement. The parties agree that the limitations on liability set forth in this Agreement are independent of any exclusive or limited remedies, and shall survive and apply even if such remedies are found to have failed of their essential purpose. No arbitration or other action arising out of this Agreement, unless involving death or personal injury, may be brought by the Customer against CGNT more than one (1) year after the cause of action arises.
- E. **FORCE MAJEURE.** If CGNT's performance of any of its obligations set forth in this Agreement is prevented, restricted, or interfered with by reason of fire, or other casualty or accident, strikes or labor disputes, inability to procure raw materials, delays in transportation, power or supplies, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirement of any government agency, or any other act or condition whatsoever beyond the reasonable control of the parties hereto, CGNT, upon giving reasonable notice to Customer, shall be excused from such performance to the extent of such prevention, restriction or interference, provided that CGNT shall use reasonable efforts to avoid or remove such causes of non-performance and shall continue performance hereunder with reasonable dispatch whenever such causes are removed.
- F. **NOTICES.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered, international courier service or certified mail or delivery either by hand or by messenger, or sent via fax, computer mail or other electronic means, addressed to the address set forth in the preamble of this Agreement. Any notice or other communication so addressed and mailed by registered or certified mail (in each case, with return receipt requested) shall be deemed to be delivered and given when so mailed. Any notice so addressed or otherwise delivered shall be deemed to be given when actually received by the addressee.

- G. **SEVERABILITY.** If for any reason any provision of this Agreement shall be deemed by a court of competent jurisdiction to be legally invalid or unenforceable in any jurisdiction to which it otherwise applies, the validity of the remainder of the Agreement shall not be affected and the offending provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law, and, in its modified form, the provision shall then be enforceable and enforced.
- H. **CAPTIONS; COUNTERPARTS.** The section heading and captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor substantively affect it in any way. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all such counterparts together shall constitute but one and the same instrument.
- I. **ASSIGNMENT.** Neither this Agreement nor any rights granted hereby may be assigned by Customer voluntarily or by operation of law without CGNT's prior written consent and any such attempted assignment shall be null and void. This Agreement shall inure to the benefit of and be binding upon any successor or assignee of CGNT.

End.