

## **ANNUAL SERVICE TERMS AND CONDITIONS**

Orbiter Inc, through its Retail, Commercial, Government, and Industrial Solution Sectors (“Orbiter”), and \_\_\_\_\_ (“Customer”) enter into this Agreement by which Orbiter will provide services to Customer, as described below. Orbiter and Customer may be referred to individually as a “Party” and collectively as the “Parties.” For good and valuable consideration, the Parties agree as follows:

### **Section 1 APPLICABILITY**

The Service Terms and Conditions apply to ‘Service from the Start’ contract whereby Orbiter agrees to provide to Customer (1) automatic software update, (2) unlimited phone support, and (3) maintenance, repair, support and/or other services under this Agreement, provided that the agreement is purchased within 30 days of the initial Orbiter Timing Lap Counter sale.

### **Section 2 DEFINITIONS AND INTERPRETATION**

- 2.1. **“Agreement”** means these Service Terms and Conditions cover the entire Orbiter Service Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In the event of conflict between this Agreement and the Contract, the Contract controls. In interpreting this Agreement and resolving any ambiguities herein, these Service Terms and Conditions will take precedence over any cover page, and the cover page will take precedence over any exhibits or attachments, unless the cover page or attachment specifically states otherwise.
- 2.2. **“Contract”** means the Orbiter invoice sales agreement for product, or additions that is subsequently and mutually agreed to be added to this agreement in the attachments section.
- 2.3. **“Equipment”** means the equipment that is specified in the sales agreement which shall be part of the attachments or is subsequently added to this Agreement.
- 2.4. **“Services”** means those installation, maintenance, support, training, and other services described in this Agreement.

### **Section 3 ACCEPTANCE**

Customer accepts these Service Terms and Conditions to and agrees to pay the prices set forth in the Agreement. This Agreement will become binding only when accepted in writing by Orbiter. The term of this Agreement will begin on the “Start Date” indicated in this Agreement.

### **Section 4 SCOPE OF SERVICES**

4.1. Orbiter will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer’s request, Orbiter may also provide additional services at Orbiter’s then-applicable rates for such services.

4.1.1 Hot Swap of Equipment. Orbiter shall use best efforts to either repair the product using an Orbiter authorized service person. Customer shall ship damaged product to Orbiter at 13500 Pacific Avenue S, Tacoma, WA 98444.

4.1.2 Orbiter shall provide 24 hour / 7 day per week / 365 day service. Service may be obtained by calling 888-816-4366. Orbiter shall use best efforts to solve issues which may be handled on the phone within 24 hours of contact.

4.1.3 Orbiter shall provide automatic software upgrades to customer and unlimited phone support. Customer shall be responsible for upgrading Orbiter's LapCounter software when requested by Orbiter. This is to ease customer service by having all customers operating on the same version of software.

4.1.4 Shipping costs: Orbiter shall pay for return shipping, and the customer shall pay for shipping to Orbiter. Shipping shall be UPS Ground unless designated an "emergency repair" by the customer in which case 2-day shipping shall be effected.

4.2. Orbiter is providing Services for Equipment, only Orbiter parts or parts of equal quality will be used; the customer and vendor shall not open the Orbiter and work inside unless authorized by Orbiter. Equipment will be serviced at levels set forth in the product manuals; and routine service procedures that are prescribed by Orbiter will be followed.

4.3. If Customer purchases from Orbiter additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at 15% per annum of the gross sales price, and the applicable rates after the warranty for such additional equipment expires. The maximum length of Service from the Start agreements is 3 years unless mutually agreed in writing.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Orbiter, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Orbiter in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for such Equipment will terminate at the end of the month in which Orbiter receives such written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Orbiter's reasonable opinion, be properly or economically serviced for any reason due to intentional damage, Orbiter may modify the scope of Services related to such Equipment; remove such Equipment from the Agreement; or increase the price to Service such Equipment, upon notice to Customer.

4.7. Customer must promptly notify Orbiter of any Equipment failure. Orbiter will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

#### **Section 5 EXCLUDED SERVICES**

5.1. Services exclude the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Services exclude items that are consumed in the normal operation of the Equipment, such as batteries, RFID tags; upgrading radios, reader hardware, accessories, custom or special products, customer modified units. Orbiter has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by such transmission medium.

#### **Section 6 TIME AND PLACE OF SERVICE**

Services will be provided at the location specified in this Agreement. When Orbiter performs Services at Customer's location, Customer will provide Orbiter, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of

liability from Orbiter or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Orbiter may perform its Services.

**Section 7 CUSTOMER CONTACT**

Customer will provide Orbiter with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Orbiter.

**Section 8 PAYMENT**

Unless alternative payment terms are specifically stated in this Agreement, Orbiter will invoice Customer in advance for each payment period. All other charges will be billed annually. Customer agrees to reimburse Orbiter for all applicable taxes including sales and use taxes, excise taxes, and other taxes or assessments levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Orbiter) by any governmental entity.

**Section 9 WARRANTY**

Orbiter warrants that its Services under this Agreement will be free of defects in materials and workmanship during the contract period. In the event of a breach of this warranty, Customer's sole remedy is to require Orbiter to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. ORBITER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**Section 10 DEFAULT/TERMINATION**

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Orbiter will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Orbiter will have no further obligation to provide Services.

**Section 11 LIMITATION OF LIABILITY**

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Orbiter's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Services provided under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT ORBITER WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY ORBITER PURSUANT TO THIS AGREEMENT.** No action for breach of this Agreement or otherwise

relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement.

**Section 12 EXCLUSIVE TERMS AND CONDITIONS**

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Orbiter's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Orbiter's request. Customer may not disclose, without Orbiter's written permission or as required by law, any such information or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, all commercial, financial or technical information disclosed in any manner or at any time by Customer to Orbiter will be deemed secret or confidential. Orbiter will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Orbiter patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

**Section 14 COVENANT NOT TO EMPLOY**

During the term of this Agreement and continuing for a period of three (3) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Orbiter or its subcontractors without the prior written authorization of Orbiter. This provision applies only to those employees of Orbiter or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it shall be modified as necessary to conform to such law.

**Section 15 MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Orbiter for the purpose of this Agreement will be and remain the sole property of Orbiter. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to such property, and return it to Orbiter upon request. Such property will be held by Customer for Orbiter's use without charge and may be removed from Customer's premises by Orbiter at any time without restriction.

**Section 16 GENERAL TERMS**

16.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

16.2. This Agreement and the rights and duties of the parties will be governed and interpreted in accordance with the laws of the State of Washington.

16.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

16.4. Neither party is liable for delays or lack of performance resulting from any causes such as strikes, material shortages, or acts of God that are beyond that party's reasonable control.

16.5. Orbiter may assign its rights and obligations, and may subcontract any portion of its performance, under this Agreement.

16.6. WHEREAS THIS AGREEMENT MAY BE RENEWED FOR AN ADDITIONAL ONE (1) YEAR TERM ON EVERY ANNIVERSARY OF THE START DATE BY CUSTOMER NOTIFYING THE OTHER PARTY IN WRITING OF ITS INTENTION TO EXTEND THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. CUSTOMER CAN ONLY RENEW THIS AGREEMENT IF THE DIR MASTER CONTRACT DIR-SDD-477 HAS NOT EXPIRED OR BEEN TERMINATED.

16.7. If Orbiter provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for such services on a time and materials basis at Orbiter's then effective hourly rates.

**ACCEPTED:  
Orbiter Inc Customer**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_