



## LINSTAR EQUIPMENT SERVICE AGREEMENT

LINSTAR, Inc. agrees to provide and the Customer agrees to accept maintenance service on the equipment listed, at the annual charges indicated in the attached proposal, in accordance with the following terms and conditions:

### 1. TERM OF AGREEMENT

1.1 The Agreement shall be signed by the Customer and will commence on the start date stated on the Agreement, and shall continue for an initial one-year term. This agreement will automatically renew for an additional one-year term on the anniversary date and each subsequent anniversary date unless Customer provides written notice of intent to not renew to LINSTAR at least 60 days prior to the expiration date of the then current contract term. All Agreements shall be billed for one year in advance.

1.2 If any issues arise during the course of the agreement that cannot be resolved due to the manufacturer not supporting the equipment any longer, LINSTAR will refund the unused portion of your agreement.

### 2. MAINTENANCE SERVICE

2.1 LINSTAR agrees to provide maintenance service availability Monday through Friday, from 8:00 a.m. to 5:00 p.m., and keep the equipment in good working order while operated in accordance with LINSTAR's published specifications while the equipment is located within LINSTAR's area of responsibility.

2.2 Payment of the charges set forth in the Proposal shall entitle the Customer to parts and labor for scheduled preventive maintenance and on-call remedial maintenance as specified in the Proposal, excluding holidays observed by LINSTAR. If the covered equipment under this Agreement includes imprinters and/or data recorders, the Proposal is made part of this Agreement.

2.3 Payment of Basic Maintenance Charge shall begin as specified in Attachment One. If applicable, contracted extension charges or zone charges as specified in Attachment One will be assessed immediately after equipment installation, for such charges are not included in the equipment warranty allowance.

### 3. CHARGES

All service calls made on equipment not under maintenance contract shall be invoiced immediately at prevailing rates. These rates are subject to change without notice.

3.1 Overtime charges: An additional charge for maintenance services rendered outside of the Period of Coverage, M-F 8:00 AM to 5:00 PM, will be made to the Customer at the rates set forth in the established LINSTAR Hourly Maintenance Price List in effect at the time services are performed.

3.2 Any maintenance service started during the Period of Coverage and completed within one hour after such period shall be treated as having been performed within such period and no additional charges shall be made.

### 4. TRAVEL EXPENSES

4.1 All travel expenses of LINSTAR Authorized Maintenance personnel for maintenance services not covered by the Period of Coverage will be paid by the Customer at the rates set forth in the LINSTAR Maintenance Price List in effect at the time of occurrence.

### 5. EQUIPMENT INSTALLATION AND RELOCATION

5.1 The Customer, at its own expense, agrees to have the installation site prepared in accordance with the installation instructions of LINSTAR, including Customer's PCs meeting minimum specifications for the LINSTAR provided equipment and software, prior to the arrival of equipment and, where necessary, shall provide computer and operator time and prepare necessary diagnostic routines in order to establish functional compatibility. LINSTAR shall install and check out all equipment.

5.2 After the original installation, the Customer must notify LINSTAR in writing at least fourteen days

prior to relocation of any equipment covered by this Agreement. The Customer will, at its own expense, furnish labor for packing and unpacking equipment and both labor and equipment needed for moving equipment to the new location. If the new location is at different premises causing LINSTAR to expend increased travel time and cost, Customer agrees to pay reasonable increased monthly maintenance charges.

## **6. EXCLUSIONS**

- 6.1 The agreement does not cover network or PC issues that are that of the customers. This includes software re-installs if a PC or Server is changed or upgraded.
- 6.2 If a lift is required to facilitate service or repair it will be the responsibility and the cost the customer to service.
- 6.3 Technician wait time is chargeable if all required parties on the part of the customer or system access system are not available to allow work to commence.
- 6.4 Service calls are billable if the equipment operating environments are not conducive to equipment operations, such as excessively hot or smoke filled.
- 6.5 There will be no charge for software upgrades if a software maintenance agreement is purchased, however, the labor associated to install any upgrade is billable at the then travel and maintenance (T & M) rates
- 6.6 Maintenance service is contingent upon the proper use of all equipment and does not include: Ribbons, cards, plates, foils, forms, type wheels, ink rollers, print rollers, rubber platens, print heads, plate frames, stencils, toner, and other like supplies for use with the equipment, including maintenance purposes, are to be provided by the Customer. Repairs resulting from use of supplies from sources other than LINSTAR are excluded and will be subject to prevailing time and materials charges.
- 6.7 Electrical work external to the equipment or maintenance of accessories, attachments, or devices not furnished by LINSTAR.
- 6.8 Service caused by supply items that do not meet LINSTAR specifications.

6.9 Repair of damage or increase in service time resulting from: Accident, transportation, neglect, theft, fire or water damage, misuse or other than ordinary use; failure of electrical power, air conditioning, or humidity control; and alterations which include but are not limited to, any changes in LINSTAR design, installation, or removal of LINSTAR features, or any other modification, whenever any of the foregoing are performed by other than LINSTAR representatives.

- 6.10 Expendable supply items or materials therefore; making specification changes or performing services connected with relocation of equipment, and adding or removing accessories, attachments, or other devices.
- 6.11 Such service, which is impractical for LINSTAR representatives to render because of alterations in the equipment or their connection by mechanical or electrical means to another machine or device.
- 6.12 Equipment located in an unsuitable place of installation or an unsafe or hazardous environment, as determined by LINSTAR.
- 6.13 Problems relating to or caused by software that was not supplied by LINSTAR.
- 6.14 Routine problems such as changing ribbons, clearing bill jams, and encoding cards.
- 6.15 Further importing/exporting of software and data is excluded. Additional importing/exporting is subject to additional charges. All Customer data must be backed up daily.
- 6.16 Loading of operating system updates or service packs. Customer shall maintain their own software updates and keep their systems up to date.
- 6.17 Migration of data or software from one PC to the next is a billable service call.

## **7. TAXES**

- 7.1 There shall be added to the above charges an amount equal to any municipal, state, and federal taxes, however designated, levied, or based on such charges of this Agreement that may be paid or be payable by LINSTAR. These additional charges shall also include any tax (excluding income tax) not presently deemed applicable, but

which is hereinafter held applicable by new law, interpretation of existing law, or otherwise. **This paragraph does not apply to tax exempt institutions or agencies.**

**8. PAYMENTS**

8.1 All charges set forth in Attachment One of this Agreement, including taxes, shall be billed by system in advance and are payable in full within thirty days after date of invoice.

**9. LINSTAR PROPERTY**

9.1 Maintenance software, test equipment, and similar property used by LINSTAR at the installation site (even if shipped with the equipment) shall remain the exclusive property of LINSTAR and shall be for the sole use of LINSTAR and under the control of LINSTAR.

**10. ACCESS TO EQUIPMENT**

10.1 LINSTAR shall have full and free access to the equipment to provide service thereon.

**11. MODIFICATIONS**

11.1 If persons other than LINSTAR representatives perform maintenance or repair of a unit of equipment, and as a result further repair by LINSTAR is required, such repairs are not included in the charges set forth in this Agreement, and will be made at LINSTAR's applicable time and material rate and terms then in effect. Maintenance by third parties could be the basis for voiding any existing warranties.

11.2 This contract may not be modified or terminated orally, and no modification or termination nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom such modification, termination, or waiver is sought to be enforced.

**12. ENGINEERING CHANGES**

12.1 Engineering changes, determined applicable to Customer will be controlled and installed by LINSTAR at no charge on equipment covered by this Agreement. The Customer may, by providing notice subject to written confirmation by LINSTAR, elect to have only mandatory changes, as determined by LINSTAR installed on equipment so designated.

**13. LIMITATION OF LIABILITY**

13.1 In no event shall LINSTAR be liable for special, incidental, consequential or punitive damages. In no event shall LINSTAR'S total liability under

this agreement exceed the sum of all amounts paid by customer to LINSTAR under this agreement up to the time the cause of action arose.

13.2 LINSTAR shall not be liable for any data lost or damaged during any service provided by LINSTAR, and in the event of any lost or damaged data LINSTAR shall not be liable for damages exceeding the actual amount paid by the customer to LINSTAR for services provided, or in the event of an annual maintenance agreement, the amount paid for the said agreement. In no event, regardless of the form of action, whether in contract or in tort, including negligence, shall LINSTAR be liable for incidental damages, consequential damages, lost data, loss of use of the equipment, or lost profits, resulting from any services performed by LINSTAR notwithstanding the fact that the customer may have been advised of the possibility of such damages.

13.3 Other than as set forth above in this paragraph, LINSTAR disclaims all warranties with respect to the equipment (including without limitation warranties as to merchantability and fitness for a particular purpose), either expressed or implied. The above express warranty is in lieu of all obligations or liabilities on the part of LINSTAR for damages, including but not limited to special, incidental, or consequential damages arising out of or in connection with the use or performance of this equipment.

**14. GOVERNING LAW**

14.1 This contract shall be governed by and construed according to the laws of the State of New York.

**15. ASSIGNMENT**

15.1 This agreement is not assignable by Customer without written permission from LINSTAR, such permission not to be unreasonably withheld, and any attempt by Customer to assign any rights, duties, or obligations, which arise under this Agreement without such permission, shall be void.

**16. MISCELLANEOUS**

16.1 This Agreement constitutes the complete and exclusive statement of the agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement, any prior course of dealing, customer, or usage of trade or course performance notwithstanding.

16.2 I agree to restrict my firm from hiring LINSTAR employees. I may hire a LINSTAR employee if I

first secure written approval from LINSTAR and compensate LINSTAR a minimum of 1 full year's current salary and benefits and agree to a transition period acceptable to LINSTAR. This does not apply to candidates/employees that qualify for jobs via the civil service process.

16.3 Customer represents that Customer is not relying on any oral or written representations or warranties not contained in this written Agreement. In the event Customer uses Customer's purchase order form in connection with the ordering of the Equipment, such order will be governed by the terms of this Agreement and any provision of such order form that in any manner differs from or is in addition to the provisions of this Agreement shall be of no force or effect. LINSTAR acceptance of such order is expressly made conditional on Customer's assent to the terms of this Agreement. Any acknowledgement by Customer of this Agreement shall be limited to the terms of this Agreement, and any provision in such acknowledgement that in any manner differs from or is in addition to the provisions of this Agreement shall be of no force or effect.

16.4 All drawings, designs and techniques, and improvements (whether patentable or unpatentable) made or conceived by LINSTAR or its agents or employees in the fulfillment of this contract shall be the property of LINSTAR and Customer agrees not to use for its own benefit or disclose to or use for the benefit of any other person any of such property.

## 17 SUBSCRIPTION/HOSTED/CLOUD BASED COVERAGE

17.1 After the initial Subscription Term, unless otherwise specified on the Order, any Software based subscriptions will automatically renew for subsequent annual terms unless the Customer gives written notice on nonrenewal at least 30 days before the last day of your then-current Subscription Term. Unless duly terminated, this Agreement will automatically renew at the then current fees in accordance with the Agreement and any Third-Party pricing and Customer agrees to pay the Subscription fees applicable to the Renewal. Customer hereby acknowledges and agrees that the renewal fees and charges may increase. LINSTAR may terminate this Subscription immediately if Customer breaches any of its obligations under this Agreement and any hosted time will be billed up to the

termination date. If the subscription is terminated for any reason Customer acknowledges they will no longer have access to any of the hosted information. Customer acknowledges that if they cancel the Subscription during a current hosted term, no refund will be given for any remaining unused Subscription.

17.2 **Access to Services.** LINSTAR distributes the Service online. You are solely responsible for providing, installing, and maintaining at your own expense all equipment, facilities, and services necessary to enable Authorized Users' access and use of the Service through the interface, including, without limitation, all computer hardware, software, and Internet access.

17.3 **User Account Security.** You are solely responsible for tracking and for ensuring the security and confidentiality of all user identifiers and passwords. LINSTAR has no liability with respect to any use or misuse of such identifiers or passwords, and any use other than as provided in this Agreement will be considered a breach of this Agreement by you.

17.4 **Service Period.** This Agreement will commence on the Subscription Date and, unless terminated early in accordance with Section 7, continue for the number of months or year(s) specified in the Subscription as measured from the Subscription Date (the "Initial Period")

17.5 **Cancellation.** Any and all rights granted to you with respect to the Service and Technology, and any and all rights granted to Software with respect to your data, will terminate on the effective date of termination. LINSTAR will have no obligation to provide the Service to you or Authorized Users after the effective date of the termination. You will pay to LINSTAR any amounts payable for your and Authorized User's use of the Service through the effective date of the termination.

## 18 CANCELLATION CLAUSE

This contract may be cancelled at any time with 30 days notice. Penalties will apply; the amount of the penalty will be two-months premiums based on pricing for the current service agreement

**LINSTAR, Inc. Service Request Phone Number: 716-631-9200 ext 2  
Service Hours are Monday – Friday, 8:00am – 5:00pm, except when closed for Holidays**