

## **Sophia Systems Instrument Service Terms and Conditions**

### **General**

This agreement (Service Agreement ) is made and entered into by and between Sophia Systems Ltd and the customer (Customer) identified on the related Customer purchase order No. \_\_\_\_\_ Dated: \_\_\_\_\_ for the provision of the services described on the related Sophia Systems Ltd quote pertaining to Sophia Systems Ltd Instruments, probe arrays, applications, software, and/or services which have been sold by Sophia Systems Ltd to Customer (the Instrument(s) and any Sophia Systems Ltd software installed on the Instrument, which software is owned and licensed by Sophia Systems Ltd to Customer. Any part or subassembly of an Instrument that is sold or provided to Customer by Sophia Systems Ltd shall be deemed Covered Parts. The Applications and Instruments are collectively referred to herein as the System.

### **1. Services**

During the Term of this Service Agreement, as defined on the related quote, and in exchange for Customers payment of the agreed to fee, Sophia Systems Ltd shall provide to Customer the services (the Covered Services) as stated on the related quote, which can include:

(a) Repair. Sophia Systems Ltd or its designee shall perform all necessary repair service and standard preventative maintenance of the equipment or otherwise correct any material reproducible failure or malfunction. A failure or malfunction shall be material if it represents a substantial nonconformity with Sophia Systems Ltd current published specifications for the Instrument and Customer determines (and notifies Sophia Systems Ltd) that such error or malfunction substantially interferes with Customer's normal use of the Instrument.

Replaced products, components or subassemblies will be new or like new of equal performance. All Sophia Systems Ltd Instruments require a consistent and reliable power source in order to perform optimally. Sophia Systems Ltd assumes no responsibility for damage caused by any power supply circuit or related units.

(b) Customer Support. (Unless otherwise stated on the quote) Customer Support will be delivered via telephone by Sophia Systems Ltd during normal Japan business hours 8 - 5 Monday - Friday, excluding holidays. Additional Sophia Systems Ltd Customer Support will be accomplished via internet communications. On-Site support will not be provided.

(c) Software Revisions. Sophia Systems Ltd will provide, at Sophia Systems Ltd discretion, further releases or upgrades relating to the software used to control the Instrument for the duration of this agreement. Any such releases or upgrades, when delivered, shall become part of the Applications and shall be maintained in accordance with the agreed to Service Agreement.

(d) Service Limitations. Customer agrees to follow the operation procedures published by Sophia Systems Ltd, including procedures for proper care. Sophia Systems Ltd shall have no obligation to support any service or parts required as a result of the following:

(i) Customer abuse, environmental condition exceeding published limits, neglect, misuse, accidents, or the failure to take reasonable care;

(ii) Improper or inadequate, adjustment, calibration or operation of the Instruments by Customer or its designee;

- (iii) Modifications made to the Instrument or System without the prior written approval of Sophia Systems Ltd;
  - (iv) Storage of the Instrument or System, chemical vapor, temperature extremes or humidity as detailed in the Sophia Systems published limits;
  - (v) Failure or fluctuation of electrical power, lightning or static; fire, water spill, flooding, chemical or reagent spill, earthquake, military or civil disturbance, or acts of God;
  - (vi) The use of accessories, media, supplies or other products not supplied or approved by Sophia Systems Ltd;
  - (vii) Damage resulting from the use of any equipment, software, or peripherals which are not part of the Instrument or System.
  - (viii) Limited Life parts are covered for ninety (90) days from installation, unless other wise stated on the quote.
  - (ix) Any consumables like but not limited to computer interface cabling.
- Customer shall reimburse Sophia Systems at Sophia Systems then-current service fees, for all work of Sophia Systems or its designee incurred in investigating any failure or malfunction that Sophia Systems reasonably determines not to be part of the Covered Services.

## **2. Limitations**

Any and all Instruments, software, other products, or any parts or subassemblies of the foregoing that are not provided by Sophia Systems Ltd or its designee shall be deemed Non-Covered Equipment. Sophia Systems Ltd shall have no obligations with respect to Non-Covered Equipment; moreover, and notwithstanding anything herein to the contrary, Sophia Systems Ltd shall have no obligation to provide Covered Services in connection with any Instruments non Covered Parts:

- (a) that have been substantially altered by Customer, including any serial numbers or other identifying markings;
- (b) that do not incorporate all of Sophia Systems Ltd engineering improvements or other fixes that Sophia Systems Ltd requests Customers to implement;
- (c) that incorporate Non-Covered Equipment or have Non-Covered Equipment attached to them;
- (d) that have been operated in conditions outside of Sophia Systems Ltd environmental or electrical site specifications, as defined in the product operation, installation or maintenance manuals provided with the Instruments; that have been operated in hazardous environments or used to analyze hazardous materials that may cause residual contamination;
- (e) That have been repaired or maintained by anyone other than Sophia Systems Ltd or its designee, except such routine operational maintenance as set forth in the product operation, installation or maintenance manuals provided with the Instrument.

### **3. Obsolete Products.**

Covered Parts, Instruments or System that are no longer offered for sale or license by Sophia Systems Ltd (Obsolete Items ) will be maintained and repaired on a reasonable efforts basis by Sophia Systems Ltd. If Sophia Systems Ltd determines in its discretion that support and service of such Obsolete Items is no longer reasonable, Sophia Systems Ltd shall notify Customer of such determination and such Obsolete Item shall be deemed to not be a Covered Part, Instrument or System.

### **4. Ownership.**

All replaced parts removed from the System in connection with any services shall become the property of Sophia Systems Ltd upon their replacement. Any and all modifications to the Instrument or System, including all intellectual property rights associated therewith, made or provided by Sophia Systems Ltd pursuant to the Service Agreement, whether alone or with any contribution from Customer or its employees, agents or contractors, shall be owned exclusively by Sophia Systems Ltd. Customer shall maintain and enforce agreements and policies with its employees, agents and contractors sufficient to give effect to the provisions of this agreement.

### **5. Limited Warranty**

Sophia Systems Ltd warrants that it will render the services hereunder in a good and workmanlike manner. As Sophia Systems Ltd sole responsibility and Customer's exclusive remedy in the event of any material failure to meet such standard, Sophia Systems Ltd shall make a reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted in writing in accordance with Sophia Systems Ltd standard procedures within thirty (30) days after delivery or the date of the required delivery of the pertinent services at issue.

EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, Sophia Systems Ltd MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE SERVICES. Sophia Systems Ltd SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

### **6. Limitation of Liability**

The total liability of Sophia Systems Ltd (including its employees, agents, subcontractors and suppliers) for all claims, whether in contract, tort (including negligence, product liability and strict liability), or otherwise, arising out of, connected with, or resulting from any performance or on performance hereunder shall not exceed the total fees hereunder allocable to the services that give rise to the claim, up to a maximum of twelve (12) months for the services at issue. In no event shall Sophia Systems Ltd be liable for any incidental, consequential, indirect, or special damages (including, without limitation, damages for loss of revenue, cost of capital, claims of service interruptions or failure of supply, and costs and expenses incurred in connection with labor, overhead, transportation, installation, or removal of equipment or programming or substitute facilities or supply sources), even if Sophia Systems Ltd has been advised of the possibility of such damages.

## **7. Term**

The term (Term ) of this Service Agreement shall commence on the date Sophia Systems Ltd receives an authorized purchase order from Customer, and continue as specified in Sophia Systems Ltd or its representative's Sales Quote describing this Service Agreement, if no such term is specified, the Term shall be one year.

## **8. Termination**

Sophia Systems Ltd may terminate this Service Agreement immediately by giving written notice of termination to Customer upon the occurrence of any of the following events:

(a) Customer defaults in the performance of any material requirement or obligation created by this Service Agreement or any other agreement between Sophia Systems Ltd and Customer;

(b) Customer fails to make any payments to Sophia Systems Ltd within (60) days of its due date;

(c) Customer ceases doing business;

(d) Customer is the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, makes an assignment for the benefit of creditors, or is unable to pay its debts when due, or a receiver is appointed for a substantial part of Customer's assets, or an action is taken toward the liquidation or winding up of Customer's business; or

(e) Customer suffers a materially adverse change in its financial condition or operations.

No termination of this Service Agreement shall release Customer from any obligation to pay Sophia Systems Ltd any amount that has accrued or become payable at or prior to the date of termination. In no event (including early termination) shall Sophia Systems Ltd be obligated to return any payments received by Sophia Systems Ltd hereunder.

## **9. Delays**

The time within which Sophia Systems Ltd obligations are required to be fulfilled hereunder will be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from causes beyond Sophia Systems Ltd reasonable control, including without limitation, acts of God, unforeseeable circumstances, acts or omissions of any governmental authority, war riot, revolution, fires, floods, earthquakes, strikes, labor disputes, sabotage, or epidemics, or failure to timely obtain instructions or information from Customer, or necessary and proper labor, materials, components, facilities or transportation.

## **10. Notices**

Any notice to a party required or permitted hereunder shall be sufficiently given only when provided in writing, and either personally delivered or sent via certified or registered mail to the party's address. Customer shall give Sophia Systems Ltd prompt notice of any address change.

## **11. Miscellaneous.**

(a) A failure by either party to enforce any right under this Service Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Service Agreement.

(b) This Service Agreement shall obligate and benefit the parties and their respective successors and assigns, provided that no assignment or transfer of any interest in this Service Agreement (including sublicense, hypothecation, security interests, and the like) may be made by Customer without the prior written consent of Sophia Systems Ltd.

(c) The invalidity or enforceability of any provision of this Service Agreement shall not affect the validity or enforceability of any other provision, the remaining provisions being deemed to continue in full force and effect.

(d) This Service Agreement shall be governed by and construed under the laws of the State of California, regardless of its or any other jurisdiction's choice of law principles.

(e) Each party shall act solely as an independent contractor with respect to the other party, and nothing in this Service Agreement shall be construed to give either party the power or authority to act for, bind or commit the other party.

(f) This Service Agreement is the entire agreement of the parties, and supersedes all prior agreements and communications, whether oral or in writing, between the parties with respect to the subject matter hereof. No amendment or modification of this Service Agreement shall be effective unless made in writing and signed by Sophia Systems Ltd and Customer. Accordingly, no sales person or field representative of Sophia Systems Ltd shall be authorized to act or make any commitment for Sophia Systems Ltd.