

Agreement Number: _____

**ENDOWORKS® SUPPORT AND MAINTENANCE AGREEMENT
OLYMPUS AMERICA INC.
MEDICAL SYSTEMS GROUP**

This EndoWorks Support and Maintenance Agreement, including the terms and conditions and the schedules attached hereto (collectively, this "Agreement"), is entered into by and between Olympus America Inc.- Medical Systems Group ("Olympus") and the customer named on the bottom of this page (the "Customer") with respect to the support and maintenance of EndoWorks software listed on Schedule B attached hereto. *This Agreement shall only be deemed effective as of the effective date given by Olympus on the bottom of this page (the "Effective Date").*

IMPORTANT

READ BEFORE SIGNING. THE TERMS AND CONDITIONS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS AND CONDITIONS IN WRITING ARE ENFORCEABLE. NO TERMS, CONDITIONS, OR PROMISES NOT CONTAINED IN THIS WRITTEN AGREEMENT MAY BE LEGALLY ENFORCED. THE TERMS AND CONDITIONS OF THIS AGREEMENT CAN ONLY BE WAIVED, MODIFIED, OR AMENDED BY ANOTHER WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED OFFICER OF OLYMPUS. NO REPRESENTATIVE, SALESPERSON, OR AGENT OF OLYMPUS IS AUTHORIZED TO CHANGE ANY PROVISION OF THIS AGREEMENT. THE CUSTOMER AGREES TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Customer Name: _____

Street Address: _____

City, State, Zip Code: _____

Olympus America Inc.
Medical Systems Group
3500 Corporate Parkway
Center Valley, PA 18034

Signature: _____

Printed Name: _____

Title: _____

Initial here if tax-exempt: _____
(See Section 8 ("TAXES"))

Signature: _____

Printed Name: _____

Title: _____

OLYMPUS USE ONLY

Effective Date: _____

Initial Term: _____

TERMS & CONDITIONS

1. KEY DEFINITIONS

- (a) "Effective Date" shall have the meaning set forth in the introductory paragraph of this Agreement.
- (b) "Error" shall mean a material failure of Supported Software to conform to Olympus's published specifications for such software that is reproducible by the Customer.
- (c) "Fix" shall mean either an Interim Release designed to correct an Error, or a temporary work-around or patch supplied by Olympus, in its discretion, to diminish or avoid the effect of an Error.
- (d) "Initial Term" shall commence on the Effective Date and conclude at the end of the period set forth at the bottom of page 1 of this Agreement.
- (e) "Interim Release" shall mean an interim version of Supported Software in which one or more previously identified Errors have been corrected. A new Interim Release typically will be indicated by the addition of or increase in the third digit of the release number (e.g., v.X.X.1, v.X.X.2).
- (f) "Maintenance Fee" shall mean the applicable fee for the Services, as specified in Section 5 of this Agreement.
- (g) "Major Release" shall mean an updated version of Supported Software with a substantial number of new or enhanced functions and/or features. A new Major Release typically will be indicated by an increase in the first digit of the release number (e.g., v.1.X, v. 2.X).
- (h) "Point Release" shall mean an updated version of Supported Software with a limited number of new or enhanced functions and/or features. A new Point Release typically will be indicated by the addition of or increase in the second digit of the release number (e.g., v.X.1 or v.X.2).
- (i) "Renewal Term" shall mean any consecutive twelve-month period, or such longer period mutually agreed to by the parties in writing, following the Initial Term for which the Customer has paid the applicable Maintenance Fee.
- (j) "Services" shall have the meaning set forth in Section 3 of this Agreement.
- (k) "Supported Software" shall mean the EndoWorks software specified in Schedule B.
- (l) "Term" shall mean the Initial Term and any Renewal Term, collectively.

2. MEANS OF SUPPORT AND MAINTENANCE. Subject to the terms and conditions of this Agreement, Olympus will provide maintenance and support services ("Services") for the Supported Software using the following channels during the Term:

- (a) **Helpdesk Support** - Olympus will provide technical telephone support and assistance seven (7) days per week, twenty-four (24) hours per day for the Supported Software. The Customer will receive a response from Olympus within four (4) hours of Olympus's receipt of the Customer's request for support or repair of Supported Software. During normal business hours, the Helpdesk phone number is 800-848-9024.
- (b) **Remote Support** - Olympus will provide remote technical support for Supported Software during the hours of 7:00 A.M. (EST) to 8:00 P.M. (EST), Monday through Friday (excluding public and Olympus holidays). Remote technical support will be provided over a secure Internet connection in most cases. Olympus shall not be obligated to provide the Customer remote technical support if the remote access specified in Section 4(e) of this Agreement is not made available by the Customer. Remote technical support is not available for the support of EndoWorks 6.x software products or any earlier software product version.
- (c) **On-Site Support** - On-site support will be performed during Olympus's normal business hours. In the event that Olympus determines that support and maintenance cannot be resolved with Remote Technical Support or Helpdesk Support, Olympus will provide on-site support for Supported Software within forty-eight (48) hours of such determination. In the event that such 48-hour period ends outside of Olympus's normal business hours, such on-site support shall be provided on the next business day. Olympus's normal business hours currently are 8:00 A.M. (local time) to 5:00 PM (local time), Monday through Friday (excluding public and Olympus holidays).

3. DESCRIPTION OF SUPPORT AND MAINTENANCE. Subject to the terms and conditions of this Agreement, Olympus will provide the following maintenance and support services (“Services”) for Supported Software during the Term:

- (a) **Restore Supported Software** – In the event a hardware failure impacts the Supported Software, Olympus will restore the Supported Software after the hardware failure has been fixed. Computer hardware warranties are separate from this Agreement and are provided by the original equipment manufacturer. Olympus does not warrant or repair computer hardware or computer peripherals. Hardware must meet the Supported Software minimal specification.
- (b) **Correct Supported Software** - Olympus will (i) use commercially reasonable efforts to promptly provide the Customer with Fixes to correct Supported Software Errors, (ii) provide to the Customer such Fixes, Interim Releases and Point Releases as are generally provided by Olympus, in its sole discretion, to its customers that receive the Services, and (iii) take commercially reasonable efforts to provide Fixes, Interim Releases and Point Releases that do not require upgrades. Notwithstanding the foregoing, the Customer may be required to upgrade the Supported Software and/or any Customer-provided software or hardware to install Fixes, Interim Releases or Point Releases provided by Olympus. If Olympus determines that any upgrade of Supported Software is required as a result of Fixes, Interim Releases or Point Releases, Olympus shall be solely responsible for the cost of such Fix, Interim Release or Point Release and such Fix, Interim Release or Point Release shall continue to receive the Services under this Agreement during the Term. In no event, however, shall Olympus be responsible for the cost of, nor shall the Customer be entitled to receive, any Major Releases pursuant to this Agreement (e.g., an EndoWorks 6.x customer shall not receive any EndoWorks 7.x releases, and an EndoWorks 7.x customer shall not receive any EndoWorks 8.x releases). If Olympus determines that any upgrade of hardware or 3rd party software is required as a result of Fixes, Interim Releases or Point Releases, Customer shall be solely responsible for the cost of the hardware or 3rd party software as a result of the Fix, Interim Release or Point Release.
- (c) **Functional Assistance of Supported Software** – Olympus will answer user questions and guide customers in the use of features and functionality of Supported Software. Olympus will perform the following customizations for Customers with Remote Support:
 - i. Knowledge Base customization
 - ii. Procedure Report Template customization
 - iii. Document customization

This service is not a replacement for training or customizations associated with the initial installation of Supported Software. If deemed excessive, Olympus may deny service at its sole discretion. The Customer can purchase training and customization services at the then-current fees for such services.

- (d) **Publish Specifications** – Olympus shall make available hardware requirements for Supported Software. Olympus shall make available the approved Operating System updates compatible with Supported Software. Olympus shall test and publish specific anti-virus software versions that are compatible with Supported Software.
- (e) **Exceptions**—This Agreement shall not cover: (i) components, parts and materials not manufactured or distributed by Olympus and/or not bearing the “OLYMPUS” brand label; (ii) supplies and consumables, including without limitation, printers, switches, hubs, cables and media; (iii) updates to operating systems, 3rd party software or installation of virus protection software; (iv) service which becomes necessary due to misuse, negligence, improper storage, non performance of scheduled operator and maintenance items, computer viruses or other causes beyond Olympus’s reasonable control, or the failure of computer hardware, equipment or programs not covered by this Agreement; or (v) support for an Error for which a Fix is made available by Olympus but is not implemented by the Customer due to Customer’s failure to upgrade to the appropriate Interim Release, Point Release, Major Release or hardware required by Olympus.
- (f) **Limited Warranty**—The Services will be warranted as set forth on Schedule A attached hereto.

4. OBLIGATIONS OF THE CUSTOMER

- (a) The Customer must provide Olympus service personnel access to the Supported Software during normal business hours, and shall use best efforts to provide such access after normal business hours as reasonably requested by Olympus. Customer acknowledges that Olympus will need access to Supported Software after the Customer’s normal business hours to address certain types of Service issues that cannot be reasonably resolved during the Customer’s normal business hours.

- (b) The Customer must follow operating and maintenance procedures for the Supported Software as documented in the Service Manual.
- (c) The Customer must promptly notify Olympus of any Errors for which the Customer is requesting Olympus to provide Services hereunder.
- (d) The Customer agrees to provide Olympus with reasonable assistance for diagnosing and correcting Supported Software problems by telephone and remote support.
- (e) The Customer shall use best efforts to provide remote access to its facility. Remote Technical Support requires the Customer to provide a broadband, secure Internet access to Supported Software. Remote technical support functionality may be limited depending on the speed of the Customer's Internet connection. The customer is responsible for the cost of the broadband connection.
- (f) The Customer is responsible for protecting its network environment from viruses and damages resulting from virus infection.
- (g) The Customer must ensure that all Customer-provided hardware components and 3rd party software used with Supported Software meet Olympus's current minimum configuration requirements for running the Supported Software.
- (h) If any Supported Software or associated hardware is shipped to Olympus, the Customer assumes the risk of loss of or damage while in transit from the Customer to Olympus.
- (i) In the event that Fixes, Interim Releases or Point Releases require the Customer to upgrade the hardware and/or Customer-provided software or hardware components, any such necessary upgrades shall be the sole responsibility of the Customer. Customer is solely responsible for any upgrades to Major Release which is hereby deemed not included in this Agreement, and shall be billed to Customer at either Olympus' then prevailing price for such Major Release or such price as Olympus and Customer agree in writing. Customer may enter into a new support and maintenance agreement with Olympus with respect to such Major Release.

The Customer acknowledges and agrees that its performance of the foregoing obligations is a condition precedent to Olympus's obligations under this Agreement. Olympus shall not be responsible for any delay caused by the Customer's failure to meet its obligations under this Agreement.

5. CHARGES

(a) Maintenance Fees

(i) **Initial Term**—The Maintenance Fee for the Initial Term shall be the applicable rates specified in Schedule B, based on the number of Supported Software licenses purchased by the Customer. Olympus will invoice the Customer for such Maintenance Fee upon the Effective Date of this Agreement.

(ii) **Renewal Term**—The Maintenance Fee for any Renewal Term shall be the applicable rates specified in Olympus's invoice issued for such Renewal Term, based on the then-current list price for the Supported Software licenses purchased by the Customer. Olympus shall have the right to increase the Maintenance Fee for any Renewal Term. Any such increase in the Maintenance Fee shall not exceed the sum of the Maintenance Fee payable during the immediately preceding year plus the product obtained by multiplying such Maintenance Fee for the immediately preceding year by two (2%) percent above the aggregate percentage increase in the CPI (as hereinafter defined) for the month that is three months prior to the Effective Date to the CPI for the month that is three months prior to the Adjustment Date. For purposes of this Agreement, CPI shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, (base year 1982-9184 equals 100), published by the United States Department of Labor, Bureau of Labor Statistics. Olympus shall invoice the Customer annually at least thirty (30) days prior to the expiration of the then-current Term, and the Customer may accept such renewal under the terms and conditions of such invoice and this Agreement by timely paying such invoice.

(iii) **Additional Supported Software**—In the event that the Customer acquires additional EndoWorks software licenses after the execution of this Agreement, the parties shall amend this Agreement to include such additional licenses or create an additional agreement. Such amendment shall set forth the applicable Maintenance Fee for such additional licenses, which shall be pro-rated for the balance of the then-current Term.

(iv) Supported Software Obsolescence— Olympus shall provide Services in support a major release for a period of three (3) years from the time of a Customer order, or for two (2) years from the release date of the next major release, whichever is longer. In addition, Olympus, at its sole discretion, may elect to extend further such time period for providing the Services. Olympus shall notify the Customer in the event that an item of Supported Software is determined by Olympus to be obsolete and no longer eligible for support under this Agreement. With respect to the Supported Software, Olympus shall take all commercially reasonable efforts to provide Customer with at least one (1) year's advance notice of obsolescence and support ineligibility. Upon notification by Olympus, such item no longer shall be deemed Supported Software under this Agreement, and Olympus shall make a pro-rata adjustment to Customer's Maintenance Fee to reflect the discontinuation of Services for such item. Such adjustment shall be Olympus's sole liability and the Customer's exclusive remedy for the discontinuation of Services for such item.

(v) Lapsed Services— If the Customer does not renew the Services at the end of the then-current Term, Olympus may, in its sole discretion, reinstate lapsed Services in accordance with its then-current policies upon payment by the Customer of the applicable reinstatement fee.

(vi) Additional Services— In the event that Olympus agrees to perform any services that are not included in this Agreement, Olympus will invoice the Customer at its then-current fees for such services.

- (b) Payment Terms** - Payment terms will be net 30 days from date of invoice. If at any time the Customer is in breach of its obligation to pay any amount due under this Agreement or any other agreement between the Customer and Olympus, Olympus's obligation under this Agreement to perform the Services shall be suspended until such time as all required payments have been made. The Maintenance Fee and any other amounts due hereunder shall be paid by the Customer unconditionally and without defense, counterclaim, or offset of any kind for any reason whatsoever. To the extent allowed by law, any delinquent payment shall continue to accrue interest at the lower of 18% or the highest lawful rate from the due date until paid.

6. TERMINATION. Either party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other party in the event that the other party breaches any of its material obligations hereunder and such breach has not been cured during such thirty-day period. This Agreement shall terminate automatically upon the expiration of the Term if not renewed by the Customer. However, termination or expiration of this Agreement, for any reason whatsoever, will not relieve the Customer from making any payments due to Olympus. Notwithstanding the foregoing, if Olympus terminates this Agreement with cause, payment for pre-Effective Date services pursuant to the prior sentence shall be in an amount equal to the pre-Effective Date Services prior to any discounts in the case of the Initial Term, and the applicable invoice, in the case of any Renewal Term.

7. OWNERSHIP OF SERVICE DELIVERABLES. As between the Customer and Olympus, Olympus shall own, and is hereby assigned, any and all right, title and interest in and to any Fix, Interim Release, Point Release or other service deliverable provided to the Customer by Olympus, including any such deliverable which contains suggested modifications made by the Customer, without the payment of any additional consideration therefore either to the Customer or its employees, agents or representatives. On Olympus's request and at Olympus's expense, the Customer shall provide reasonable assistance to Olympus in perfecting its rights in and to any such deliverables.

8. TAXES. By initialing the "tax-exempt" line located on the first page of this Agreement, the Customer represents and warrants that it is a tax-exempt organization and as such is not subject to applicable taxes. Tax-exempt status must be substantiated by a copy of the Customer's tax-exempt certificate. If the Customer is not tax-exempt or in the event the Customer loses its tax-exempt status or is acquired by an entity which is not tax-exempt, all applicable taxes and fees will be added to the invoices sent to the Customer hereunder and the Customer will reimburse Olympus for all such applicable taxes or fees that may be levied by any taxing authority.

9. ASSIGNMENT. Neither party shall assign or otherwise transfer any of its rights under this Agreement without the prior written consent of the other party, and any such attempts without consent shall be void.

10. EVENTS BEYOND OLYMPUS'S CONTROL. Neither party shall be responsible or liable for any failure to perform hereunder if such failure is caused by acts of God, acts of government, strikes or labor disputes, failures of transportation, fire or flood or other casualty, failures of subcontractors or suppliers, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) that are beyond such party's reasonable control.

11. CHOICE OF LAW AND FORUM. This Agreement shall be deemed to have been made within and under the laws of the Commonwealth of Pennsylvania and will be governed under the substantive laws of the Commonwealth of Pennsylvania without

regard to the conflict of laws rules thereof. Olympus may institute and prosecute to judgment in any court of competent jurisdiction (including, without limitation, the Court of Common Pleas for Lehigh County, or the United States District Court for the Eastern District of Pennsylvania) an action, suit or proceeding to effect collection of any monies due to Olympus from the Customer.

12. DISCOUNT DISCLOSURE. This Agreement and the payments hereunder may result in a discount or reduction in price with respect to the services provided to the Customer hereunder. Discounts to the Maintenance Fee and the cost of pre-Effective Date services, if any, are set forth in Schedule B, in the case of the Initial Term, and the applicable invoice, in the case of any Renewal Term. Olympus provides this information so that the Customer can comply with its obligation to properly disclose and appropriately reflect the net value or reduced prices of services on applicable cost reports or in charges to Medicare, Medicaid, and other federal health insurance programs or state health insurance programs in accordance with Section 1128B(b)(3) of the Social Security Act, 42 U.S.C. § 1320a-7b(b)(3). If the Customer requires any further information, the Customer may contact Olympus and such information will be provided to the Customer.

13. AUTHORIZATION. The Customer acknowledges that, when entering into this Agreement, Olympus has relied upon the Customer's representation that the Supported Software will be used only by the 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.

14. COMPLETE AGREEMENT. This Agreement (including the attached schedules) is the complete agreement of the parties with regard to the subject matter hereof, and supersedes all prior or contemporaneous oral or written proposals, communications, understandings and agreements regarding this subject matter. The waiver of a breach of any provision of this Agreement will not be a waiver of any subsequent breach of the same or any other provision hereof. The terms and conditions contained in any purchase order or other communication sent by the Customer to Olympus shall be of no effect.

15. NOTICES. All notices hereunder shall be in writing and shall be deemed to have been given when mailed or sent by first class mail or recognized overnight delivery service, postage prepaid, addressed to such party at its address set forth on page 1 hereof or at such other address as such party may have subsequently provided in writing.

16. CONTRACT INTERPRETATION. Each party hereto acknowledges that it has had ample opportunity to review and comment on this Agreement. This Agreement shall be read and interpreted according to its plain meaning and an ambiguity shall not be construed against either party. It is expressly agreed by the parties that the judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Agreement. The headings contained herein are for reference only and are not a part of this Agreement and shall not be used in connection with the interpretation of this Agreement.

SCHEDULE A

LIMITED WARRANTY AND LIMITATION OF LIABILITY

Subject to the exceptions listed in Section 3(e) and the limitations and disclaimers set forth below, Olympus's sole warranty and representation to the Customer is the Services shall be performed in a good and workmanlike manner.

OLYMPUS MAKES NO AND DISCLAIMS ALL OTHER REPRESENTATIONS, GUARANTIES, CONDITIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED OR ARISING UNDER ANY STATUTE, ORDINANCE, COMMERCIAL USAGE OR OTHERWISE, WITH RESPECT TO THE SERVICES PROVIDED HEREIN AND THE PRODUCTS AND MATERIALS PROVIDED IN CONNECTION WITH SUCH SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO THE MERCHANTABILITY OF THE SERVICE, PRODUCTS AND MATERIALS, OR THEIR FITNESS FOR A PARTICULAR PURPOSE, OR RELATING TO THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT, OR ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES HEREIN. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL OLYMPUS BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, OR LIABILITIES TO OTHER PARTIES, HOWEVER CAUSED, WHETHER IN CONTRACT OR TORT, OR BY THE NEGLIGENCE OF THE SERVICE PROVIDER OR OTHERWISE. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT OLYMPUS'S LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY IS LIMITED TO THE PERFORMANCE OF THE SERVICES PROVIDED BY THIS AGREEMENT OR THE FAIR MARKET VALUE THEREOF.

SOME STATES MAY NOT RECOGNIZE A DISCLAIMER OR LIMITATION OF WARRANTIES AND/OR LIMITATION OF LIABILITY SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO THE CUSTOMER. THE CUSTOMER MAY ALSO HAVE DIFFERENT AND/OR ADDITIONAL RIGHTS AND REMEDIES THAT VARY FROM STATE TO STATE. IF ANY IMPLIED WARRANTIES APPLY AS A MATTER OF LAW, THEY ARE LIMITED IN DURATION TO THE LENGTH OF THIS WARRANTY. OLYMPUS DOES NOT WARRANT THAT ANY SOFTWARE PROVIDED IN CONNECTION WITH THE SERVICES WILL OPERATE ERROR-FREE OR UNINTERRUPTED, OR THAT THE SERVICES AND THE PRODUCTS AND MATERIALS PROVIDED IN CONNECTION WITH SUCH SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS.

Representations and warranties made by any person, including but not limited to representatives of Olympus, which are inconsistent or in conflict with or in addition to the terms of this warranty, shall not be binding upon Olympus unless reduced to writing and approved by an expressly authorized officer of Olympus.