



400 Avenue D, Suite 10
Williston, VT, 05495

Tel.: 800 522 6743
Fax: 802 878 1122

LABORIE EQUIPMENT SERVICE AGREEMENT

This Equipment Service Agreement (this "Agreement") is by and between LABORIE Medical Technologies Corp., a Delaware (U.S.A.) corporation, having a place of business at 400 Avenue D, Suite 10, Williston, VT 05495 ("LMT") and the customer whose name is set forth in the signature page of this Agreement ("Customer"). The effective date of this Agreement is the date notated on Exhibit A.

Recitals

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

Agreement

In consideration of the matters stated in the Recitals 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.

Authorized Service Personnel: means individuals and companies authorized by LMT to provide service support including LMT's Endoscopy support specialists.

Coverage Term: shall begin on the Effective Date and will end on the date set forth on Exhibit A of this Agreement.

Equipment: means LMT's products and the supplies related thereto owned by Customer and listed in Exhibit A.

Loaner Equipment: means LMT's equipment that is loaned by LMT to the Customer, subject to the terms and conditions of this Agreement.

2. COVERAGE TERMS, EXCLUSIONS AND PROCEDURES

- A. **SERVICES.** Subject to the terms and conditions of this Agreement LMT shall provide the following services for the Equipment through Authorized Service Personnel ("Services"):
 1. Repair service for all Equipment damaged during normal use according to the instructions for use and subject to the exclusions in Section 2B;
 2. Preventative maintenance as described in Section 2D hereof;
 3. Return ground service shipping of repaired Equipment;
 4. Availability of Loaner Equipment, subject to Section F hereof; and
 5. Training and support provided by LMT's Authorized Service Personnel via telephone.
- B. **EXCLUSIONS.** Services shall not include:
 1. Defects or damage resulting from use of accessories, consumables or supplies not authorized by LMT;
 2. Defects or damage resulting from accidental damage, abuse, negligence or other damage from external sources;
 3. Defects or damage resulting from reprocessing methods not approved by LMT;
 4. Any consumables or supplies for use with the Equipment, including common replacement items such as cables, filters, connectors, lamps and plugs.
 5. Any components, parts, and materials not manufactured or distributed by LMT, or not installed by LMT.



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6. Any Equipment which has been disassembled, repaired, tampered with, altered, changed, or modified by persons other than Authorized Service Personnel.
7. In the interest of safety for the Customer and the patient, LMT will not perform partial repairs or accept partial repair requests.
8. Defects or damage from Customer's failure to comply with Section 2.E.
9. Return of the equipment to Customer will be at the Customer's expense if the problem is caused by one of the issues above.

C. PROCEDURES.

1. Notification and Shipping.

- a. Notification. Customer shall notify LMT of the need for Services by calling LMT's technical support or emailing a completed Incident Report Form (found on LMT's website) to techsupport@laborie.com within twenty-four (24) hours of becoming aware of the problem. LMT may request additional information related to the issue if needed for providing Services.
- b. Equipment. If return of the Equipment is required to provide Services, LMT shall prepare and provide Customer with a "Returned Material Authorization" (RMA) number, which must be included with the returned Equipment. Customer agrees to not return the Equipment without first obtaining an RMA number from LMT. LMT shall issue a prepaid shipping label to Customer for shipping the Equipment. Once LMT has received the Equipment, it shall provide the Customer with an estimate of the time required to complete the Services and return the Equipment to Customer.

2. **Repair.** LMT shall provide all parts and labor necessary to complete the repair to its then-current specifications or replace the Equipment at LMT's discretion. LMT reserves the right to use qualified, quality-assured reconditioned, refurbished, and/or serviceable used parts for Services provided hereunder.

- #### D. PREVENTIVE MAINTENANCE.
- Authorized Service Personnel shall be allowed to visit the Customer's site as often as reasonably determined by LMT during the Coverage Term for 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 may be returned to LMT for Service as described in Section 2B hereof. Additionally, the Customer agrees to provide time with the Customer's staff for LMT's Authorized Service Personnel to train and educate the Customer and its employees on the proper care and maintenance of the Equipment.

E. OBLIGATIONS.

1. The Customer agrees to follow all cleaning, reprocessing, operating, and maintenance procedures for the Equipment, and any Loaner Equipment, as described in LMT's instructions for use and/or user 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 LMT.
2. The Customer agrees not to use any Equipment that is damaged or malfunctioning in any way for use in treating patients.
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 LMT's service facilities. LMT assumes the risk of loss or damage upon its acceptance of delivery of the Equipment and while in LMT's possession.

F. LOANER, OBSOLETE, PREVIOUSLY PURCHASED EQUIPMENT.



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1. **Loaner Equipment.** During the Coverage Term, Customer may request that LMT provide Loaner Equipment for the Customer's use at the Customer's facility while Services are being provided. So long as the Customer is in compliance with all of the terms and conditions of this Agreement, LMT agrees to provide Loaner Equipment to the Customer until the Equipment undergoing Services is returned, subject to the following terms and conditions:
 - a. An RMA number for returning the Equipment for Services must be obtained by Customer before any Loaner Equipment will be provided.
 - b. The Customer is responsible for all transportation, repair, theft, loss or damage of the Loaner Equipment. The Customer acknowledges that LMT remains the sole owner of Loaner Equipment. The Customer will keep the Loaner Equipment free of all liens and encumbrances.
 - c. If any Loaner Equipment provided to the Customer is damaged by the Customer or requires repair during the Coverage Term, such Loaner Equipment will be covered by the service terms under this Agreement. Customer shall be responsible for the cost of all repairs or replacement of Loaner Equipment not included in Services.
 - d. The Customer agrees to use all Loaner Equipment in accordance with the terms and conditions of this Agreement and the instructions for use and/or user manuals of the Loaner Equipment.
 - e. Prior to returning Loaner Equipment, the Customer must disinfect the Loaner Equipment as provided in Section 2.E.1 hereof.
 - f. The Customer agrees to return the Loaner Equipment to LMT within five (5) business days after LMT has returned the Equipment (regardless of whether the Equipment was or was not repaired). *If LMT does not receive the Loaner Equipment within said five (5) business days, then LMT reserves the right to issue an invoice to the Customer for the retail value of the Loaner Equipment and Customer agrees to pay the invoice in full.
2. **Obsolete Equipment.** If LMT determines that Equipment covered under this Agreement becomes obsolete during the Coverage Term and is no longer capable of being serviced under this Agreement, LMT will perform the following:
 - a. LMT shall so notify the Customer immediately.
 - b. The obsolete Equipment shall be removed from Exhibit A.
 - c. The overall price of the Agreement will be adjusted, on a pro rata basis (to include the Equipment remaining covered by the Agreement and the remaining Coverage Term), to reflect the discontinuation of services for such obsolete Equipment. The adjustment to the overall price will be LMT's sole obligation and the Customer's exclusive remedy for the discontinuation of Services for such obsolete Equipment.
3. **Previously Purchased/Currently Owned Equipment.** This Agreement covers only the Equipment that is newly manufactured by LMT, repaired by LMT under this Agreement, or previously purchased LMT Equipment that is in proper working condition and meets LMT's acceptable performance criteria. To establish proper working condition of previously purchased Equipment currently in clinical use, pre-coverage evaluation of the Equipment by LMT is required. Upon evaluation, should the Equipment need repairs necessary to return the Equipment to LMT's acceptable performance criteria, such repairs must be completed before the previously purchase equipment is included in this Agreement as Equipment, and the Customer will be responsible for the payment separately from the payment for this Agreement.

3. PAYMENT

The purchase price for the LABORIE Agreement is stated in Exhibit A. 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 LMT's obligation under this Agreement to perform Services will be suspended until all required payments have been made.

4. TERMINATION



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Either party may terminate this Agreement at any time for cause upon thirty (30) days prior written notice to the other party, if 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 LMT, 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 LMT and nothing in this Agreement shall be deemed to grant to Customer a license or other right to use LMT's intellectual property.

6. GENERAL

- A. AUTHORIZATION.** The Customer acknowledges that, when entering into this Agreement, LMT 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. LIABILITY.** LMT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING THE PRODUCTS OR SERVICES (INCLUDING SERVICES, EQUIPMENT AND LOANER EQUIPMENT). IN NO EVENT SHALL LMT 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 LMT BE LIABLE FOR ANY DAMAGES UNDER OR ARISING OUT OF THIS AGREEMENT IN EXCESS OF THE AGGREGATE AMOUNTS ACTUALLY PAID BY THE CUSTOMER TO LMT 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.
- D. FORCE MAJEURE.** If LMT'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, pandemic, 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, LMT, upon giving reasonable notice to Customer, shall be excused from such performance to the extent of such prevention, restriction or interference, provided that LMT 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.
- E. 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, e-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.



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- F. 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.
- G. 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.
- H. ASSIGNMENT.** Neither this Agreement nor any rights granted hereby may be assigned by Customer voluntarily or by operation of law without LMT'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 LMT.