

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC <sup>1</sup>	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:  
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee.

**ASSIGNEE'S MOTION FOR ORDER APPROVING  
SERVICE LEVEL AGREEMENT WITH INFINITT NORTH AMERICA  
AND FOR AUTHORITY TO PAY RELATED FEES AND COSTS**

Soneet Kapila of KapilaMukamal, as assignee (“**Assignee**”) of LSI Management Company, LLC (“**Assignor**”), moves the Court for the entry of an order approving the Assignee’s

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<sup>1</sup> On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

entry into the Service Level Agreement (the “**Agreement**”) with Infinitt North America (“**Infinitt**”) and authorizing the payment of related fees and costs. In support of this motion, the Assignee states as follows:

### **Background**

1. On March 14, 2019, Laser Spine Institute, LLC (“**LSI**”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes. The Assignee also filed Petitions commencing fifteen other assignment for the benefit of creditors proceedings for fifteen affiliates of LSI (the “**Assignment Cases**”).

2. In the years leading up to the Assignment Cases, LSI and its affiliates (the “**Assignors**”) comprised one of the nation’s leaders in minimally invasive spine surgery, operating state-of-the-art outpatient surgery centers located near several major cities throughout the country with over 500 employees. Immediately prior to executing the assignment, LSI operated outpatient surgery centers in Tampa, Florida; Cincinnati, Ohio; Scottsdale, Arizona; and St. Louis, Missouri. LSI closed down three other surgery centers in Ohio, Oklahoma, and Pennsylvania in the Fall of 2018. The Assignors ceased all business operations on March 1, 2019.

3. On or about October 15, 2014, the Assignor entered into a Sales Agreement (the “**Original Agreement**”) wherein Infinitt provided the Assignor with its Infinitt Radiology PACS Software and Maintenance Services.

4. Inasmuch as the Assignor has ceased normal business operations, the Assignee desires to enter into the Agreement wherein Infinitt will provide Read-Only Software Maintenance Services (the “**Services**”). The Services are integral to the preservation of patient records. The fee for the Services will be \$1,200.00 per month.

5. The parties have agreed that the Original Agreement will be terminated as of April 7, 2019 (the “**Effective Date**”).

6. The Assignee seeks authority to enter into the Agreement with Infinit for the Services. A copy of the Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

### **Relief Requested**

6. The Assignee seeks the Court’s approval of the Agreement, which the Assignee believes is in the best interest of the Assignment Estates.

7. The Assignee further requests authority to pay the associated fees and costs set forth in the Agreement.

8. Section 727.110 of the Florida Statutes permits the Court to approve the Agreement, as the statute allows the Court to “exercise any other powers that are necessary to enforce or carry out the provisions of this Chapter.” Fla. Stat. § 727.110(15).

9. Approval of the Agreement is in the best interests of creditors and parties in interest.

WHEREFORE, the Assignee respectfully requests the Court enter an order (a) granting this Motion; (b) approving the Agreement effective as of the date of execution, (c) authorizing the Assignee to pay fees and costs required by the Agreement, and (d) granting such other relief as is just and proper.

/s/ Edward J. Peterson

Edward J. Peterson (FBN 0014612)  
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Counsel for Assignee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Motion has been furnished on this 14th day of June, 2019 by the Court's electronic system to all parties receiving electronic service, and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list, and to:

Infinit North America  
Attn: David O. Smarro, President  
[dsmarro@infinitna.com](mailto:dsmarro@infinitna.com)

*/s/ Edward J. Peterson*

\_\_\_\_\_  
Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

May 31, 2019

**Assignors and Assignor's Counsel: (via the Court's electronic servicing system)**

CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Laser Spine Institute, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC  
c/o Nicole Greensblatt, Esq.  
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601 Lexington Avenue  
New York, NY 10022  
Email: [ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)

**Assignee and Assignee's Counsel (via the Court's electronic servicing system)**

Soneet Kapila  
c/o Stichter Riedel, Blain & Postler, P.A.  
Attn: Edward J. Peterson, Esq.  
110 E. Madison Street, Suite 200  
Tampa, Florida 33602

**Secured Creditors:**

CarePayment, LLC  
5300 Meadow Rd., #400  
Lake Oswego, OR 97035

Steris Corporation  
5960 Heisley Rd.  
Mentor, OH 44060

CIT Bank, N.A.  
10201 Centurion Pkwy., #400  
Jacksonville, FL 32256

Medport Billing, LLC  
6352 S. Jones Blvd., #400  
Las Vegas, NV 89118

U.S. Bank Equipment Finance  
1310 Madrid St.  
Marshall, MN 56258

Maricopa County Treasurer  
c/o Peter Muthig, Esq.  
222 N. Central Ave., #1100  
Phoenix, AZ 85004  
Email: [muthigk@maco.maricopa.gov](mailto:muthigk@maco.maricopa.gov)

**Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)**

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c/o Eric E. Ludin, Esq.  
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Joe Bailey; Mark Miller; Ted Suhl; Laserscopic Spinal Centers of America, Inc.; Laserscopic Medical Clinic, LLC; Laserscopic Surgery Center of Florida, LLC; Laserscopic Diagnostic Imaging; Laserscopic Spinal Center of Florida, LLC; and Tim Langford  
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Laser Spine Institute, LLC  
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LSI Management Company, LLC  
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Case No. 2019-CA-2777  
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

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# EXHIBIT A

**ASSIGNEE'S MOTION FOR ORDER APPROVING  
SERVICE LEVEL AGREEMENT WITH INFINITT NORTH AMERICA  
AND FOR AUTHORITY TO PAY RELATED FEES AND COSTS**

## SERVICE LEVEL AGREEMENT

**CONTRACT NUMBER:** Laser.Spine-EL-SLA(ReadOnly)-052119-A  
LSI Management Company, LLC  
("CUSTOMER")

<b>Customer's Primary Contact for this Agreement:</b>		<b>Infinit's Primary Contact for this Agreement:</b>	
<b>Name:</b>	Soneet R. Kapila	<b>Name:</b>	David O. Smarro
<b>Title:</b>	Assignee	<b>Title:</b>	President & CEO
<b>Address:</b>	1000 S. Federal Highway, Suite 200 Fort Lauderdale, FL. 33316	<b>Address:</b>	Hillcrest Professional Plaza 755 Memorial Parkway, Suite 304 Phillipsburg, New Jersey 08865
<b>Telephone:</b>	954-761-1011	<b>Telephone:</b>	908-387-6960
<b>Fax:</b>	954-761-1033	<b>Fax:</b>	908-387-6965
<b>Email:</b>	kapila@kapilamukamal.com	<b>Email:</b>	dsmarro@infinitna.com

This Service Level Agreement (the "Agreement") prescribes the terms under which Infinit North America, Inc. ("Infinit") agrees to provide Soneet Kapila, as assignee of LSI Management Company, LLC ("Customer") with software support services. Each of Infinit and Customer are a "Party" hereto, and collectively, they are the "Parties".

### RECITALS

**WHEREAS**, on October 15, 2014 the Parties entered into a Sales Agreement ("Original Agreement") wherein Infinit agreed to provide Customer with Infinit Radiology PACS Software, and Maintenance Services.

**WHEREAS**, LSI Management Company, LLC has ceased normal business operations.

**WHEREAS**, the Customer is the assignee for the benefit of creditors of LSI Management Company, LLC and related entities in assignment proceedings pending in Circuit Court in Hillsborough County, Florida (the "Assignment Court").

**WHEREAS**, the Customer has ceased normal business operations.

**WHEREAS**, the Parties desire to enter into a new Service Level Agreement wherein Infinit will provide to Customer Read-Only Software Maintenance Service.

**WHEREAS**, upon the Effective Date of this Agreement, the Parties agree to terminate the Original Agreement and any addenda or other agreements, signed proposals or quotations made between the Parties with no further force or effect.

**NOW THEREFORE**, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

This Agreement includes the following exhibits:

- A. Description of the System supported by Infinit on behalf of Customer is specified in Exhibit A.
- B. Charges are specified in Exhibit B.
- C. Terms of Maintenance Services provided by Infinit are specified in Exhibit C.

755 Memorial Parkway, Unit 304, Phillipsburg, NJ 08865, 908-387-6960 phone, 908-387-6965 fax  
<http://www.infinitna.com>



**1. Definitions**

- 1.1 "Infinitt Materials" shall mean any Infinitt Software code, or other materials transmitted to Customer under the terms of this Agreement or any previous agreement between the Parties.
- 1.2 "Third Party Software" shall mean any software provided to Customer under the terms of this Agreement or any previous sale agreement between the Parties that is not wholly owned and supported by Infinitt.
- 1.3 "System" shall have the meaning of both Infinitt Materials and Third Party Software and is described in Exhibit A.
- 1.4 "Maintenance Services" shall mean the support services to be provided by Infinitt to Customer under this Agreement as defined in Exhibit C, attached hereto.
- 1.5 "Authorized User" means any individual Customer permits to use the System.
- 1.6 "Charges" means the amount to be paid by Customer to Infinitt for the Maintenance Services. Charges are defined in Exhibit B, attached hereto.
- 1.7 "Effective Date" as used in this Agreement shall be April 7, 2019.

**2. Licenses**

- 2.1 From Infinitt to Customer. Subject to this Agreement, Infinitt hereby grants to Customer, including to all Authorized Users, a non-exclusive, non-transferable, non-sub-licensable, non-assignable, terminable, and worldwide license to access and use the System listed in Exhibit A. Customer shall have the right to use System for Customer's internal business operations only.
- 2.2 Infinitt agrees to provide Customer with maintenance service according to Maintenance Services outlined in Exhibit C. Infinitt will maintain the System for the term of this Agreement and will provide Maintenance Services within platform according to Customer's level of support.
- 2.3 Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to either Party.
- 2.4 Nothing in this Agreement will be deemed to convey any title or ownership interest in the System to Customer. Customer will not sell, disclose, lease, sublease, lend or otherwise make the System available to anyone who does not need access for Customer to use the System to accomplish its intended purpose.

**3. Term and Termination**

- 3.1 Customer agrees to month to month contractual term of Maintenance Service beginning the Effective Date.
- 3.2 Either Party may terminate this Agreement upon sixty (60) days advanced written notice.
- 3.3 Upon the Effective Date of this Agreement, Original Agreement and any addenda or other agreements, signed proposals or quotations made between the Parties shall be terminated with no further force or effect.
- 3.4 System may be used by Customer only so long as Customer is not otherwise in default under this Agreement or any other agreement with Infinitt.
- 3.5 Return of Confidential Information. Upon termination of this Agreement for any reason, each Party will return to the other Party all Confidential Information (as defined in paragraph 6.1) and equipment or property (if any) received from the other Party pursuant to or in contemplation of this Agreement.
- 3.6 Data Upon Termination. Upon termination of this Agreement, and at Customer's option, Infinitt will provide Customer with reasonable assistance for Customer to transfer Customer's image Data to an alternate system. Such transition will be at Customer's expense, conditioned on fully curing all payment defaults to Infinitt, and the costs of



Infinitt's transition assistance will be charged to Customer at Infinitt's then current standard rates.

#### 4. Terms of Use

- 4.1 Any Infinitt supplied hardware located at Customer's site required by Infinitt for performance of the System, or any component thereof, (i) shall not be modified, reconfigured, or removed from the site without Infinitt's prior written consent (ii) and Customer shall only use the Infinitt supplied hardware for internal use, while Infinitt is providing Maintenance Service for System or all of Infinitt's obligations under this Agreement shall be void.
- 4.2 Infinitt reserves the right to modify or replace any onsite hardware if any component that is no longer supported (End-Of-Life) and does not permit the System to perform as specified in this Agreement at Customer's expense.
- 4.3 Customer agrees not to (i) modify, reconfigure, reinstall, or otherwise reverse engineer any Infinitt program, code, or technology installed or delivered to Customer or any portion thereof; (ii) transmit or allow to be transmitted any Infinitt Materials to any third party except as necessary for the fulfillment of this Agreement; (iii) sublicense or allow use of the System, including but not limited to Infinitt Materials, to any third party other than Authorized Users without written permission from Infinitt; (iv) copy or reproduce the System (v) probe, scan, test the vulnerability of, or circumvent any security mechanisms used by, the sites, servers, or networks connected to the System, (vi) upload or distribute of any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the System, (vii) use the System in any way not intended or expressly provided for by this Agreement.

#### 5. Charges and Payment Terms

- 5.1 Customer agrees to pay Infinitt from the assignment estates the Charges in the amounts and at the times set forth in **Exhibit B**. Invoices are payable net thirty (30) days after invoice date. Thereafter, any outstanding balance will bear simple interest at the lower of 12% per annum or the highest interest rate permitted by law. In no event shall Soneet Kapila or KapilaMukamal, LLP be liable for fees or costs.
- 5.2 Additional Hardware, Services, and/or Software Licenses required by Customer during the Initial Term not described in the attached **Exhibit A**, such as add-on functionality, will require additional charges and will be quoted separately.
- 5.3 In the event that Customer fails to make payment in accordance with the terms set forth above, Infinitt is authorized by Customer to employ alternative collection measures to obtain payment from Customer of past due amounts including but not limited to suspending the Maintenance Services outlined in **Exhibit C**. Customer further agrees that any costs, expenses and fees (including but not limited to attorneys' fees) incurred by Infinitt in attempting to collect such past due amounts owed by Customer shall be added to the past due amount owed, and shall be paid by Customer to Infinitt.
- 5.4 Taxes. The Charges set forth in this Agreement do not include any taxes. Where applicable, these shall be added to such Charges and Customer shall pay amounts equal to any taxes (however designated, levied, or based) on such Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Infinitt or other sole Infinitt-related taxes.

#### 6. Confidentiality

- 6.1 "Confidential Information" of a Party means all confidential or proprietary information, including but not limited to all, information not generally known to the public. Confidential Information includes all data and information that is submitted to or learned by either Party in connection with this Agreement and including information

755 Memorial Parkway, Unit 304, Phillipsburg, NJ 08865, 908-387-6960 phone, 908-387-6965 fax  
<http://www.infinittna.com>



relating to either Party's customers, patients, technology, operations, facilities, products, systems, procedures, practices, research, development, employees, pricing, business affairs and financial information. Without limiting the foregoing, Confidential Information includes all such information provided to each Party by the other Party both before and after the date of this Agreement.

- 6.2 All Confidential Information relating to a Party will be held in confidence by the other Party to the same extent and with at least the same degree of care as such Party protects its own Confidential Information of like kind, but in no event using less than a reasonable degree of care and in accordance with all applicable laws. Neither Party may disclose, duplicate, publish, release, transfer or otherwise make available Confidential Information of the other Party in any form to, or for the use or benefit of, any person or entity without the other Party's prior written consent.

## 7. Data

- 7.1 Nothing in this Agreement will be deemed to convey any title or ownership interest in Customer's Data to Infinit. Customer shall be solely responsible for the content of the Data.
- 7.2 Data Backup. Customer shall be solely responsible for the backup and recovery of the Data. Infinit will, at Customer's written request, create a backup export of the database to a local share. It will be the responsibility of the Customer to backup and protect this database export in addition to the image archive. Infinit disclaims any responsibility or liability for any data backups unless Customer has chosen to purchase disaster recovery backup and recovery services from Infinit.
- 7.3 Ownership of Intellectual Property. Infinit will retain all interest in all documentation, modifications, improvements, upgrades, derivative works, all other Intellectual Property rights in connection with the System, including Infinit's name, logos, and trademarks reproduced through the Service.

## 8. Warranties.

- 8.1 Infinit represents and warrants that it is authorized to provide the Maintenance Service to Customer under the terms of this Agreement.
- 8.2 Infinit warrants that the Infinit Materials will perform according to the Maintenance Services specified in Exhibit C and any requirements set forth in this Agreement. Infinit shall use commercially reasonable efforts to remedy nonconformities, if Customer promptly so requests, by providing changes to the operational procedures to avoid the effect of nonconformities. Infinit does not warrant that the System, will meet Customer's requirements, operate without error or interruption, or operate at all if used in violation of Infinit's instructions on use.
- 8.3 Infinit takes no responsibility and has no liability for or in respect of the information provided by Customer. Infinit reserves the right to make changes to the System and/or the pricing if, at any time information provided by Customer proves to be incorrect, inaccurate or incomplete. All images of products and services are for illustration purposes only and the actual product(s) may vary.
- 8.4 Any hardware or devices purchased from or through Infinit shall carry the warranty directly and exclusively from and by their original manufacturers. All hardware and devices obtained by Customer (i) through a third party or (ii) for from Infinit under the terms of a previous agreement between the Parties ("Customer Hardware") will be Customer's sole responsibility and Infinit disclaims all liability and responsibility for same. Should the System not perform as specified in this Agreement caused by limitations, defects, deficiencies of or in Customer Hardware Infinit reserves the right to modify or replace Customer Hardware at Customer's expense or all Infinit's obligations under the terms of the Maintenance Services shall be void.

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- 8.5 Infinitt Materials shall be free from defects in materials and workmanship for the life of this Agreement. Infinitt reserves the right to remedy any known or unknown errors in the system provided to Customer.
- 8.6 Any Third Party Software purchased from or through Infinitt shall carry the warranty directly and exclusively from and by their original manufacturers.
- 8.7 **Except for the warranties stated in this Agreement, Infinitt hereby disclaims all warranties, whether express or implied, including but not limited to any warranties of merchantability, fitness for a particular purpose, or non-infringement. No warranty shall be created or increased in scope by other oral or written communication from Infinitt or its employees, agents, or other representatives.**

## 9. Indemnification

- 9.1 Indemnification by Infinitt. Infinitt will defend, indemnify and hold Customer harmless from and against any third party claims, suits or actions against Customer arising out of any claim that the Infinitt Materials infringes any United States patent or copyright, or misappropriates any trade secret, of any third party. Infinitt will have no liability for any claim of infringement based on: (i) modifications of the System by Customer or third parties; (ii) use of System with non-Infinitt software or equipment; (iii) or use of the System other than as expressly allowed under the terms of this Agreement and Applicable Law. Such indemnification, defense, and hold harmless obligations require that Customer notifies Infinitt promptly upon learning of such claim and any delay to provide said notification does not adversely prejudice or impact Infinitt's ability to defend against said claim, and Customer gives Infinitt authority, information and assistance to defend or settle the claim. This Section states the entire liability of Infinitt and the exclusive remedies of Customer with respect to infringement.
- 9.2 Indemnification by Customer. Customer, and not Infinitt, will be fully responsible for any uses made of the System by Customer, its agents, employees, Authorized Users, and representatives and for the consequences of any decisions made or actions taken or not taken based in whole or in part thereon.

## 10. Limitation of Liability

- 10.1 **Under no circumstances will either Party or their respective employees, agents, suppliers, or other representatives be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages. Even if such Party knew or should have known about such damages, from any act or failure to act or arising out of or related to this agreement, including but not limited to damages from lost use, lost business, lost revenues, lost profits, lost goodwill, lost savings, lost productivity, lost or damaged images or data, lost or damaged property (whether real or personal, tangible or intangible, corporeal or incorporeal), cost of replacement products or services, cost of downtime, cost of capital, or claims of third parties (including but not limited to claims related to medical malpractice, medical diagnosis, or other liabilities from use of the System).**
- 10.2 **Except as set forth in Section 9 of this Agreement, and for breach due to Infinitt's gross negligence or willful misconduct, the cumulative liability of Infinitt to Customer for any actual or alleged damages arising out of, based on or relating to breach of this Agreement will not exceed the amount of charges paid to Infinitt under the terms of this Agreement.**

## 11. Force Majeure

- 11.1 Infinitt shall not be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of Infinitt and without fault or negligence. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, nuclear accidents, earthquakes, acts of

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terrorism, other disasters, acts of Customer or its Authorized Users, or acts of other approved third parties outside of InfinitT's reasonable control.

- 11.2 InfinitT shall be not be liable or responsible for delays or failures in performance resulting from interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications (including but not limited to Internet connectivity) or third party services, virus attacks or hackers, failure or downtime of any third party software (including, without limitation, web server software, FTP Servers, or statistics), network issues relating to Customer's site or network, or inability to obtain supplies, or power used in or equipment needed for provision of services. InfinitT will guarantee only those areas considered under the control of InfinitT.

## 12. Equipment, Protocols & User Obligations

- 12.1 Customers Site. InfinitT shall provide Maintenance Services at Customer's Site based on the information proposed, reviewed and approved by InfinitT and Customer. Customer shall ensure the Site meets and maintains adequate hardware and environmental specifications, or all of InfinitT's obligations under this Agreement shall be void. The Customer is responsible for all network connectivity, connections, and for adequate bandwidth for data transfer. InfinitT may, at its sole election, require a physical inspection of Customer's site(s) by InfinitT representatives.
- 12.2 Access. Customer must provide the appropriate access (including remote access) so that InfinitT can deliver the Maintenance Services or all of InfinitT's obligations under the terms of this Agreement shall be void.
- 12.3 Support for Third Party Software. Third Party Software, including software purchased from InfinitT, is not supported by default by InfinitT. InfinitT will, however, investigate the issue and contact the Vendor of software supplied by InfinitT or integrated into InfinitT software if a quick resolution cannot be procured by InfinitT technical support. Operating System support on Customer PC's (or workstations) is not covered except if it relates to any modification required to the Operating System from a standard Microsoft factory install to support InfinitT Materials.
- 12.4 No Medical Advice. Although some content available through the System may be clinical or related to medical treatment ("Content"), Customer acknowledges that the availability of such Content does not constitute an opinion, medical advice, diagnosis, procedure or treatment of any particular condition, and is provided for informational or educational purposes only. Content is provided on an AS-IS basis, and Customer's use of any Content is at Customer's own risk.
- 12.5 Introduction of Viruses and Malwares. In using the System hereunder, Customer shall not introduce into InfinitT's computer systems, operating systems, datacenter, applications or other equipment or software any program routine, device, comprising a trap door, time bomb, trojan horse, worm, spyware, bot, cookie; malicious logic, viruses, malware, ransomware, usage locks, physical or electronic license keys or disabling mechanisms or other routine, file or feature, whether such disabling mechanisms are based on calendar date or elapsed time, that is designed to track, monitor or capture computer or user files, information or data, or to delete, disable, deactivate or otherwise render the System or any other of InfinitT's software, hardware or network inoperable. Customer shall reimburse InfinitT for its costs incurred as a result of Customer not performing its obligations as set forth in this section.
- 12.6 Anti-Virus Obligations. Customer shall be responsible for implementing, maintaining, and updating all necessary and proper procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses, and other code that manifest contaminating or destructive properties (collectively "Viruses") and InfinitT disclaims any responsibility for same.



### 13. General Provisions

- 13.1 Trademarks. Customer warrants that it has the right to use any applicable trademarks or copyrighted materials that Customer integrates or uses in connection with this System.
- 13.2 Publicity. Infinitt may include Customer's trademarks, name, and logos in its customer lists. Customer may require Infinitt to withdraw any use of Customer's trademarks, name, and logos if Customer reasonably considers that Infinitt's use of the trademark, name, and logo is derogatory, defamatory, or detrimental to Customer or in any way damages Customer's business or reputation.
- 13.3 Authority and Capacity. The Parties warrant they have the authority and capacity to enter into this Agreement, subject to the approval of the Assignment Court.
- 13.4 Disputes. If legal proceedings are commenced to resolve a dispute arising out of or relating to this Agreement each Party shall pay its own costs, legal fees, and expert witness fees as well as any costs or legal fees in connection with any appeals.
- 13.5 Entire Agreement. This document is the complete and entire Agreement except to the extent that another document is expressly incorporated herein by reference. Infinitt and the Customer agree that the provisions of this Agreement may not be modified unless the modification is (i) in writing; (ii) specifically references this Agreement; and (iii) is signed by authorized representatives of both Parties.
- 13.6 Relationship of the Parties. The relationship of Customer and Infinitt under this Agreement is that of independent contractors. Nothing in this Agreement will be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the Parties hereto. Nothing in this Agreement authorizes either Party to bind the other, to incur any liability on behalf of the other, or to act as an agent for the other.
- 13.7 Survival. Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in the following Sections of this Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the Parties:
- i.) Section 3 "Term and Termination"
  - ii.) Section 5.5 "Taxes"
  - iii.) Section 6 "Confidentiality"
  - iv.) Section 7 "Data"
  - v.) Section 9 "Indemnification"
  - vi.) Section 10 "Limitations of Liabilities"
  - vii.) Section 13 "General Provisions"
- 13.8 Transfer of Agreement. Customer may not assign or transfer this Agreement, in whole or in part, without the prior written consent of Infinitt. In the event that Customer contemplates whole or partial sale of Customer's business, Customer shall notify Infinitt by mail, facsimile, or email no less than sixty (60) days prior to the effective date of the event.
- 13.9 Assignment. Infinitt may upon written notice to Customer assign this Agreement to any entity that succeeds to some or all of the business of Infinitt through merger, consolidation, a sale of some or all of the assets of Infinitt, or any other similar transaction. None of the rights, interests or obligations of Customer under this Agreement may be assigned by Customer without the prior written consent of Infinitt.
- 13.10 Successors and Assigns. Subject to the above Assignment Section, this Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective successors and permitted assigns.
- 13.11 Waiver. A waiver of a breach or default under this Agreement or a delay or failure in exercising a right or enforcing a provision of the Agreement will not be a waiver of any subsequent breach or default. Failure of either Party to enforce compliance with any term or condition of this Agreement will not constitute a waiver of such term or condition.



- 13.12 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 13.13 Equitable Relief. It is specifically agreed that the breach of this Agreement may result in irreparable injury and the Party who claims such a breach will be entitled to seek specific performance and injunctive relief to correct and enjoin such breach in addition to all other remedies which might be available.
- 13.14 Governing Law; Jurisdiction; Attorney's Fees. This Agreement will be construed in accordance with the laws of the State of Florida, without giving effect to the conflict of law rules thereof. Any legal action or proceeding with respect to this Agreement must be brought in a state court in the Assignment Court, and each of the Parties hereby consents to the jurisdiction of such court and irrevocably waives, to the maximum extent permitted by law, any objection or defense of lack of jurisdiction or inconvenient forum. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.
- 13.15 Counterparts. This Agreement may be executed by facsimile signature and by either of the Parties in counterparts, each of which will be deemed to be an original, but all such counterparts will constitute a single instrument.
- 13.16 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when delivered if personally delivered by hand, (b) when received if sent by a nationally recognized overnight courier service (receipt requested), (c) upon receipt, if sent by first class mail, return receipt requested, or (d) when receipt is acknowledged by an affirmative act of the Party receiving notice, if sent by facsimile, telecopy or other electronic transmission device (provided that such an acknowledgment does not include an acknowledgment generated automatically by a facsimile or telecopy or other electronic transmission device). Notices, demands and communications to each Party will, unless another address is specified in writing, be sent to the addresses indicated on the signature page to this Agreement.
- 13.17 No Third Party Beneficiaries. Nothing in this Agreement is intended or will be construed to confer upon any person, firm or entity other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as a third party beneficiary or otherwise. All of the terms, covenants and conditions hereof are for the sole and exclusive benefit of the Parties hereto and their permitted successors and assigns.
- 13.18 Approval of the Assignment Court: This Agreement is subject to the approval of the Assignment Court.

IN WITNESS WHEREOF, The Parties represent and warrant that, on the date first written above, they are authorized to enter into this Agreement in its entirety, and duly bind their respective principals by their signatures below.

**Soneet Kapila, as Assignee**

Name: Soneet R. Kapila

Title: Assignee

**Infinitt North America**

Name: David O. Smarro

Title: President & CEO



Signature Date signed no signature  
6/10/2019Signature Date signed 6/10/19**EXHIBIT A.**  
**System****Read Only System & Service**

- Read only system license, no new data to be added
- 2 Admin User Licenses
- Includes image viewing and CD burning Licenses
- Infinitt shall include System relocation service at no additional charge.
  - Customer will be responsible all the hardware relocation
  - Infinitt will check the software and license and reconfigure if needed

**INFINITT-Results VR reporting package**

Integrated Voice Recognition within the Infinitt PACS viewer

- Completely integrated Voice Recognition (VR) system
- Completely web-based so the advanced functionality is not limited the LAN or WAN
- Fast workflow for the ultimate in productivity and result turnaround
- Combines VR and transcription as needed on the fly

**Interfaces**

- Maintain Current Interfaces

**EXHIBIT B.**  
**Charges**

**Monthly Fee:** \$1,200.00/ month

**Invoices:** Invoices are payable net thirty (30) days after invoice date. Thereafter, any outstanding balance will bear simple interest at the lower of 12% per annum or the highest interest rate permitted by law.

**Taxes:** The Charges do not include any taxes these shall be added to the above Charges including, but not limited to, state and local sales, privilege, property, and use or excise taxes. If Customer is a tax-exempt entity Customer must supply InfinitT with the appropriate documentation indicating same.

**Effective Date:** April 7, 2019



**EXHIBIT C.**  
**Terms of Maintenance Services**

Infinitt agrees to provide Customer with Maintenance Service (as defined below) for the according to the roles and responsibilities included below.

**1. CUSTOMER HELP DESK SERVICE**

- A. Infinitt's Customer Helpdesk will be available from 7:00AM – 7:30PM EST/EDT Monday-Friday excluding Holidays outlined in Infinitt's stated holiday schedule, described below. After hours support is offered outside of the hours of 7:00AM – 7:30PM EST/EDT by a live technical representative through a rotation of tech support personnel. Real time support is offered when calling into the Infinitt Customer Helpdesk during regular hours of operation, however, if this is not the case during after hour support.
- B. **INFINITT HOLIDAY SCHEDULE**
  - o New Year's Day
  - o Memorial Day
  - o Independence Day
  - o Labor Day
  - o Thanksgiving Day
  - o Christmas Day

**2. NOTIFICATION**

- A. Infinitt will notify the appropriate Customer representative in advance of any planned scheduled maintenance, updates, and/or planned outages prior to performing such work. Lead time for such notifications will be as set forth in the bullet points below. Customer will specifically notify Infinitt with a detailed list of Customer contacts who must be notified. Upon Customer approval based on successful testing in test system Infinitt will make every reasonable attempt to provide as much lead-time as possible, provided that such notice will not be later than as set forth below.
  - o Maintenance Release Installations - 5 Work Days in advance
  - o Major Software Updates - 21 Work Days in advance

**3. TRACKING AND REPORTING**

- A. Customer will report to Infinitt any System outage or potential outage of which it is or becomes aware. This notification will be via telephone, email, or other verbal reporting and may be changed by the Parties to include other notification technologies.
- B. Infinitt will report to Customer any System outage or potential outage of which it is or becomes aware. This notification will be via telephone, email, or other verbal reporting and may be changed by the Parties to include other notification technologies.

**4. UPDATES**

An update is defined by a change of the bug fix number as defined followed: A.B.C.D, where A is the main product number, B is the major version number/update, C is the minor version number/update, and D is the bug fix number.

- A. Update installation necessary to maintain the System in its contracted state shall be agreed upon by Infinitt and Customer on a timely basis with all Updates made generally available by Infinitt.
- B. Updates shall be the responsibility of Infinitt and shall be scheduled according to the terms outlined above for such notification, as approved by Customer. Updates shall be implemented during Infinitt's regular business hours only. Any updates





requested by Customer to be implemented after Infinit's regular business hours are subject to an additional charge.

- C. Infinit may perform patches and minor updates. Any non-critical patch, which would require downtime, will be scheduled according to the terms defined above.
- D. Both Parties will have the right to request additions to the contracted services. In the event that Customer specifically requested additions necessitate additional capital investment on the part of Infinit, Infinit will present a quote within 7 business days to the Customer stating the additional-charges involved with the specific addition requested only by Customer.
- E. In the case that Infinit announces the discontinuation of a product, the product will be maintained with bug fixes and supported for at least three years after such announcement.

**5. CUSTOMER RESPONSIBILITIES [KEVIN, PLEASE VERIFY WE CAN DO THIS?]**

- A. Provide and maintain a suitable, safe and hazard-free location and environment for the Infinit products and services in material compliance with any written requirements provided by Infinit, ensure that any non-Infinit provided service is performed by, and Infinit products are used by, qualified personnel including rack with sufficient space, adequate power (multiple power), UPS, air conditioning, network etc.
- B. Customer is responsible for all network connectivity, connections, and for adequate bandwidth for data transfer.
- C. Provide Infinit prompt and unencumbered access to the products, network cabling and communications equipment necessary to perform services. This access includes providing and maintaining connectivity to the products (internet connections, VPN persistent access, broadband internet connection, or other secure remote access reasonably requested by Infinit) to permit Infinit to perform support services and meet service levels, including remote diagnostic, monitoring and repair services.
- D. Provide a secure area reasonably near the products for Infinit's proprietary service materials. Customer shall not have any right, title or interest in or to these materials or any license or other right to access, use, or decompile these materials. Customer agrees to use reasonable efforts to protect this Infinit property against damage, loss or unauthorized access or use.
- E. Promptly place service calls in accordance with any reasonable Infinit protocols provided to Customer and designate a Customer representative and alternate as Infinit's support contacts with the necessary skills to assist Infinit with Customer related issues
- F. Customer shall be responsible for performing all end-user activities related to the normal operation and administration of the System, including but not limited to security, and data administration (for example, adding new users and privileges, adding new user groups and user-group privileges, changing user-access rights, updating the physician list, updating any data in the database).
- G. This responsibility includes maintaining secure network and network security components, firewalls and security-related hardware or software, preventing unauthorized access to the product and preventing interception of communications between Infinit's service center and the products.
- H. The Customer shall maintain physical security and for the System. The Customer shall ensure the Sites meets and maintains the adequate hardware environmental specifications, or all of Infinit's obligations under this Agreement shall be void.
- I. Customer is responsible for all MS Service Packs and Security Patches
- J. Customer is responsible for anti-virus software.