

**SONY ELECTRONICS INC.**  
**BUSINESS SOLUTIONS AND SYSTEMS COMPANY**  
**PICTURESTATION HYBRID ADVANCE EXCHANGE SERVICE AGREEMENT**  
**TERMS AND CONDITIONS**

**1.0 SCOPE AND DEFINITION OF SERVICES**

The Services provided to Customer hereunder shall be those Service levels and Options indicated in this Agreement for the items of equipment listed herein. (the "Equipment"). The Service shall be provided only during the Principal Period of Maintenance (PPM), which shall be Sony's normal business hours, unless otherwise specified on the face hereof.

**1.1 RIGHT TO INSPECTION**

Sony reserves the right to require the Customer to make the Equipment available for inspection either at a Sony Service Location, or at the Customer location to enable Sony to determine current operating condition prior to acceptance of this contract. If the inspection is done at a Sony Service Location, it shall be the Customer's responsibility to deliver or ship the Equipment to the Sony Service Location. Customer shall bear all costs of labor, and of shipping (freight prepaid and insured) both to and from the Sony Service Location. If the inspection is to be done at the Customer location, Customer is responsible for all labor and travel costs associated with the Sony representative's visit to the site at Sony's per incident field service rates then in effect.

**2.0 TERM OF CONTRACT**

- A. The term of this PictureStation Hybrid Advance Exchange Agreement is for three (3) years from date of its purchase for all components in the PictureStation system except (i) scanner which is covered for one (1) year only, the kiosk which is covered for mechanical defects for one (1) year only and (ii) printers which are covered by PictureStation Hybrid Advance Exchange Agreement for three (3) years or 40,000 prints, whichever comes first. After 40,000 prints Customer must make arrangements with Sony or an authorized Sony servicer to perform a mechanical overhaul of the printer before another Agreement for the printer shall be offered by Sony.
- B. Sony may, at its sole discretion, either (i) suspend performance of this Agreement or (ii) cancel this Agreement if Customer fails to make any payment identified as delinquent or if Customer fails to maintain adequate credit status within ten (10) days of written notice from Sony. Such suspension or cancellation shall not relieve Customer of its obligation to pay all fees due thereunder for the full extent of the term of Agreement indicated on the face hereof. In the event of such cancellation, all such fees and other obligations hereunder shall, at Sony's option, be accelerated and immediately due and payable.
- C. Sony reserves the right to cancel this Agreement if the Customer abuses the Equipment. Sony shall provide written notice of such cancellation or change to Customer, effective immediately. A pro-rated refund calculated at the then current rates shall be sent to the Customer within thirty (30) days.
- D. Customer may terminate this Agreement as respects any item of Equipment upon 90 days written notice to Sony subject to the following limitations: (i) any item of Equipment which has received any Remedial Repair, Periodic or Preventive Maintenance, Overhaul Service, FRB Advanced Module Exchange, or On-site Support may not be removed from this Agreement until Sony has received payments hereunder for the earlier of 12 months following the date the item receives any of the aforementioned services or the expiration of this Agreement..

**3.0 TELEPHONE SUPPORT**

Under this Agreement, if Customer is having a problem with its Equipment, Customer must first contact Sony by calling **866-465-7669** to help determine if the Equipment is in need of repair ("Defective Equipment"). If Sony determines that the Equipment is in need of repair and if Customer has purchased the Advance Exchange service for the Equipment, then Section 4.0, below, shall apply. If Sony determines that the Equipment is in need of repair and if Customer has purchased the Advance Box service, then Section 5.0, below, shall apply.

**4.0 HYBRID ADVANCE EXCHANGE**

A. Sony will provide for (i) the exchange of defective Equipment ("Defective Equipment") with a new or refurbished unit ("Replacement Unit") of comparable functionality for the models listed on the face of this agreement and, if Sony's deems appropriate (ii) on-site repair of Defective Equipment or installation of Replacement Unit for specific PictureStation system components.

B. Unless Sony notifies Customer otherwise, Customer shall install the Replacement Unit and return the Defective Equipment to the Sony designated service location within three (3) business days of receiving the Replacement Unit. Title to the Replacement Unit shall at all times remain with Sony unencumbered by Customer until the Defective Equipment is received, inspected and accepted by Sony at the agreed upon Service Location, at which time title to the Replacement Unit shall transfer to Customer and title to the Defective Equipment shall transfer to Sony. Risk of loss for the Defective Equipment and Replacement Unit shall remain with Customer and Sony (respectively) until title to each unit transfers in accordance with the process described above, at which time, risk of loss for the Defective Equipment and Replacement Unit shall transfer to Sony and Customer (respectively).

C. Unless Sony determines to perform the repair of the Defective Equipment at Customer's location, Sony shall bear the costs of shipment of the Defective Equipment to the Sony National Service Center at 2520 Zanker Road, San Jose CA 95131. If the Defective Equipment is not received at the Sony Service Location specified herein within twenty (20) business days of receipt of the Replacement Unit, Sony may elect to charge the Customer for the list price of the Replacement Unit. Customers who have been charged for non-return of Defective Equipment and return Defective Equipment units to Sony within 90 days of receipt of replacement product shall be refunded what they have been charged for non-return of the product less a 'restocking fee' of 20% of product list price.

Customers returning Defective Equipment units that fall within any of the exclusions listed in Section 6.0, below, are liable for the parts, labor and shipping charges incurred by Sony to effect repairs thereto, based on Sony's then current time and materials rates. Customers returning Defective Equipment units that (i) are diagnosed with no discernable problem (ie. 'no fault found') are subject to a 1 hour minimum service charge at the current prevailing Sony Professional Service depot labor rate or (ii) require only cleaning of the thermal head shall be billed at Sony's then current flat rate.

**5.0 ADVANCE BOX**

For Customers who have elected the Advance Box depot service option for printers, the Customer shall contact Sony per Section 3.1 of this Agreement and Sony shall send a shipping container, at Sony's cost, to the Customer's site for use by the Customer to return its faulty printer to Sony. Customers must ship the printer using the supplied shipping container to the Sony National Service Center at 2520 Zanker Road, San Jose CA 95131. Customers shall bear the cost of shipment of the container and printer to Sony. Repaired printers shall be returned to the Customer by 2nd day shipment for Depot Standard service (DS).

**6.0 EXCLUSIONS**

Service under this agreement does not cover the following:

- A. Equipment to which a modification, attachment, alteration or addition has been made unless the modification, alteration or addition had been previously authorized in writing by Sony;
- B. Equipment of which Sony's individual product or serial identification number has been altered or removed without the express written consent of Sony;
- C. Equipment which has been damaged or rendered defective due to accident, negligence, misuse, abuse, abnormal use, unauthorized repair, fire, flood, vandalism, theft, any act of God, operation of Equipment with non-compatible equipment or contrary to operating instructions including environmental, electrical and operating temperature standards, or any combination of the above, or caused by accessories, alterations, or attachments of other devices not furnished by Sony. Determination of the cause of damage shall be at Sony's sole judgment;
- D. installation and removal of Equipment, except in cases where Sony determines the Equipment can not be repaired on-site and must be removed to a Sony service facility.
- E. for software programming and program maintenance;
- F. Equipment which is or shall be operated in excess of the System Operational Usage indicated on the face hereof;
- G. Equipment which is covered by an onsite Service Level and which is moved to a new location without Sony's prior written consent. Sony reserves the right to terminate this Agreement with regards to any of the Equipment which is moved or relocated without Sony's prior written consent;
- H. Equipment which is located or moved to any location outside the 48 contiguous United States, except that depot Service Level is available for equipment located in Alaska;
- I. Equipment which is located where conditions represent a hazard to the safety or health of Sony service personnel;
- J. optional circuit boards, accessories, cables, or consumable supplies (e.g. ribbons, belts, batteries, etc.) unless indicated on the face hereof;
- K. CRT, LCD and plasma displays that exhibit image 'burn-in' on the display screen.
- Printer mechanical overhauls are explicitly excluded from this Agreement and are available to Customers for purchase at a flat rate service charge.

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Services shall be provided in accordance with the Service levels and Options indicated HEREIN and shall be performed during the PPM. Any Services that Customer requests to be, or which are, performed outside the scope of this Agreement or PPM shall be on a reasonable efforts basis and at Sony's then-current Time & Materials rates.

#### **7.0 CUSTOMER DATA**

Customer shall be solely responsible for maintaining backup data necessary to replace Customer data lost or damaged from any cause.

#### **8.0 FEES AND TAXES**

##### **8.1 FEES**

- A. For Agreements sold directly by Sony to Customer, the Fee(s) for Services indicated herein shall be due and payable upon receipt of Sony's invoice. These fees may be revised upon renewal of an expired contract. If monthly or quarterly, such fees are due and payable thirty (30) days in advance of the month or quarter to be covered. For Service Pack Agreements sold to Resellers by Sony for resale to Customer, the Fee(s) for Services are payable according to the payment terms established by the Reseller and Customer.
- B. Sony may, at its discretion, charge Customer for any of the Services provided hereunder, at Sony's then current rates, if the cause of the Equipment failure is determined by Sony to be operator error, subjection of the Equipment to any of the exclusions indicated in Article 4.0, or if no problem is found with the Equipment, or if any Services are provided outside the PPM. Such charges will be in addition to the fees otherwise due Sony by the Customer hereunder and will be due upon receipt of the Sony invoice therefor.
- C. Sony reserves the right to impose a late charge of any fees not paid by their due date. The late charge will be equal to 1.5% per month, or the maximum rate allowed by law, whichever is less, of the overdue fees.

##### **8.2 TAXES**

Customer shall bear the cost of any sales, use, excise or similar taxed (exclusive of taxes based upon Sony's net income) applicable to the Service to be performed or fees charged under this Agreement, unless Customer provides Sony with a tax exemption certificate or license (i.e. not-for-profit organizations) acceptable to the appropriate taxing authorities.

##### **9.0 EXCLUSION OF WARRANTIES**

**THE SERVICE WORK ORDER/INVOICE ISSUED IN CONNECTION WITH ANY OF THE SERVICES PERFORMED HEREUNDER WILL STATE THE LIMITED WARRANTY APPLICABLE THERETO. PRODUCT WARRANTIES FOR REPLACEMENT UNITS SHALL BE COTERMINOUS WITH THE ORIGINAL PRODUCT WARRANTY. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, ON THE PARTS OR SERVICES FURNISHED UNDER THIS AGREEMENT. SONY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED IN SECTION 2-312(3) OF THE UNIFORM COMMERCIAL CODE AND/OR IN ANY OTHER COMPARABLE STATE STATUTE IS EXPRESSLY DISCLAIMED.**

##### **10.0 LIMITATION OF LIABILITY**

**THE LIABILITY OF SONY, IF ANY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER UNDER THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY, AND WHETHER ARISING IN CONTRACT OR TORT, REGARDLESS OF THE DELIVERY OR NON-DELIVERY OF REPLACEMENT UNITS, OR WITH RESPECT TO THOSE PRODUCTS, SHALL NOT BE GREATER THAN THE ANNUAL FEES PAID BY CUSTOMER HEREUNDER WITH RESPECT TO WHICH SUCH CLAIM IS MADE. UNDER NO CIRCUMSTANCES SHALL SONY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RELATIVE TO THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR COMPENSATION, REIMBURSEMENT OR LOSS OF PRESENT OR PROSPECTIVE PROFITS, CUSTOMER DATA, EXPENDITURES, INVESTMENTS OR COMMITMENTS, WHETHER MADE IN THE ESTABLISHMENT, DEVELOPMENT OR MAINTENANCE OF BUSINESS REPUTATION OR GOODWILL, COST OF CAPITAL, OR FOR ANY OTHER REASON WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE CLAIMS OF ANY THIRD PARTY.**

##### **11.0 GENERAL**

##### **11.1 STATUTE OF LIMITATIONS**

No action arising out of the furnishing of parts or the Services under this Agreement may be brought by either party more than eighteen (18) months after the cause of action has accrued.

##### **11.2 FORCE MAJEURE**

Sony shall not be liable for any delay or failure to perform hereunder if such delay or failure is caused by events or circumstances beyond the reasonable control of Sony.

##### **11.3 ACCESS**

Customer and/or its customer shall provide Sony with reasonable and timely access to its facilities and all information necessary for Sony to perform the Services.

##### **11.4 ASSIGNMENT AND DELEGATION**

The Customer shall not assign or otherwise transfer this Agreement or any interest herein or any right thereunder without the prior written consent of Sony; and any such purported assignment, transfer or attempt to assign or transfer any interest herein or right hereunder, without the prior written consent of Sony, immediately shall be null, void and of no effect and shall result in the termination of this Agreement. Sony may, however, delegate its obligations to another party which Sony determines is qualified to perform the service hereunder. Such third party may include, but is not limited to, a Sony authorized dealer, third party service, or subcontractor. Sony will, nevertheless, remain liable under this Agreement for full performance of any obligations so delegated.

##### **11.5 WAIVERS**

Waiver by either party of any breach, or failure to enforce any of the terms and conditions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

##### **11.6 NON-EXCLUSIVENESS**

Except as provided in Articles 9.0 and 10.0 hereof, any specific right or remedy provided in this Agreement shall not be exclusive but shall be cumulative upon all other rights and remedies set forth herein and allowed under applicable law.

##### **11.7 LITIGATION**

In the event of any litigation between the parties with respect to this Agreement, the prevailing party (the party entitled to recover costs of suit, at such time as all appeals have been exhausted or the time for taking such appeals has expired) shall be entitled to recover court costs and reasonable attorneys' fees in addition to such other relief as the court may award.

##### **11.8 HEADING**

The headings of Articles in the Agreement are for convenience and reference only and they in no way define, limit, or describe the scope of the provisions of such Articles and shall not be considered in the interpretation or enforcement of this Agreement.

##### **11.9 GOVERNING LAW AND VENUE**

This Agreement shall be construed and enforced in accordance with the local law of the State of New Jersey. The parties hereby consent to and submit to the jurisdiction of the federal and state courts located in the State of New Jersey, and any action or suit under this Agreement shall only be brought by the parties in the federal or state court with appropriate jurisdiction over the subject matter established or sitting in the State of New Jersey. The parties shall not raise in connection therewith, and hereby waive, any defenses based upon the venue, the inconvenience of the forum, the lack of personal jurisdiction, the sufficiency of service of process or the like in any such action or suit brought in the State of New Jersey.

##### **11.10 INVALIDITY**

Should any part of this Agreement for any reason be declared invalid, or unenforceable by the court, then the Agreement in its entirety shall be automatically terminated upon such determination.

##### **11.11 EXPORT**

Customer shall not export any Replacement Units or related technology or software in violation of applicable U.S. laws and regulations. Additionally, Customer shall be responsible for obtaining any required export licenses for Replacement Units.

##### **11.12 ENTIRETY OF AGREEMENT**

This Agreement supersedes, terminates and otherwise renders null and void any and all prior written and/or oral agreements entered into and between Customer and Sony with respect to Service of the Equipment. This Agreement represents and incorporates the entire understanding of the parties hereto with respect to the matters herein above expressly set forth and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, nature or description whatsoever made by either party to the other except such as are expressly set forth in this Agreement. This Agreement may be modified only by a written instrument signed by all parties to this Agreement, which instrument makes specific reference to this Agreement.