

1. METASYSTEMS DUTIES

During the term of the Agreement, starting on the Coverage Date, MetaSystems Group, Inc. (MGI) will provide the following services:

- 1.1 Telephone Support:** MGI will provide live telephone support during normal working hours, (9:00 AM to 5:45 PM EST, Monday through Friday, except MGI's recognized holidays) ("Normal Hours"). If specified in the Service Contract MGI will provide telephone support outside of Normal Hours. If a representative is not available MGI will return calls within a reasonable time.
- 1.2 On-Line Support:** MGI may provide internet-based support on-line to return the equipment covered by the Service Contract, ("Equipment") to good working order during Normal Hours. MGI will provide the necessary proprietary software tools. If specified in the Service Contract MGI will provide on-line support outside of Normal Hours.
- 1.3 On-Site Service:** MGI will provide remedial maintenance by Company trained representatives on-site when all other support efforts have failed to return Equipment to good working order. Remedial maintenance will be performed at the customer's facilities as specified in the Service Contract ("Customer's Facilities") during Normal Local Hours (9:00 AM to 5:00 PM, Monday through Friday, except MGI's recognized holidays). Remedial Maintenance may be provided outside of Normal Local Hours at customer's request, at an additional charge for overtime labor and expenses.
- 1.4 Preventive Maintenance:** With Extended Service Contract Plus MGI will provide one scheduled preventive maintenance visit per year by Company-trained representatives to insure Equipment performs properly. These services will be provided at the Customer's Facilities during Normal Local Hours.
- 1.5 Replacement Parts:** MGI will provide all necessary replacement parts to maintain Equipment, with the exception of consumables such as bulbs, lamps, filters, toner and ink cartridges, etc. or parts at the end of their normal lifetime. MGI will make its best effort to advise Customer when components reach the end of their normal lifetime before their coverage ends and provide the option to replace these parts at a reasonable price. MGI will take possession of all replaced parts, unless otherwise agreed. Replacement parts do not extend the warranty.
- 1.6 Loaner Equipment:** MGI will make an effort to provide loaner equipment on customer request if repairs cannot be performed or replacement parts are not available within reasonable time. MGI retains title to all loaner equipment, unless otherwise agreed.
- 1.7 Software Updates:** MGI will provide software updates (service releases) that become available on demand while the contract is in force, by electronic transfer.
- 1.8 Software Upgrades:** MGI will provide software upgrades (new releases with enhanced functionality) that become available in the coverage period only if they are explicitly included. Delivery will be on demand by electronic transfer. MGI will also provide new manuals when they become available with the upgrades.

2. EXCLUSION FROM MAINTENANCE DUTIES

MGI's obligations under this agreement do not apply to:

- 2.1 Negligence:** if the need for services or parts arises from (i) any intentional acts or negligence of Customer's employees, agents or invitees, (ii) anyone other than MGI authorized personnel attempting to repair or service Equipment unless instructed by MGI, (iii) use of special attached or devices not provided by MGI, (iv) misuse of Equipment, including, without limitation, non-compliance with instructions in the user manual or given by MGI's representatives or use of Equipment for any application or function for which it was not designed or (v) data or program loss due to unauthorized tampering, or malware.
- 2.2 Other Equipment:** accessories, attachments, supplies, machines or other devices not furnished by MGI or electrical or mechanical work external to Equipment.
- 2.3 Transportation:** maintenance required to repair damage resulting from Customer's transportation of Equipment.
- 2.4 Microscopes:** service and support of any microscope attached to the imaging system unless specifically included.
- 2.5 Minor General Maintenance:** minor general and maintenance tasks such as cleaning of Equipment, changing of bulbs, ink cartridges, filters, etc.
- 2.6 Consumables:** consumables such as bulbs, toner, etc.
- 2.7 Beyond Normal Lifetime:** components beyond their normal lifetime.
- 2.8 Data Recovery:** data recovery or replacement of archive media including any data on these media.
- 2.9 Excused Events:** MGI shall not be liable for any failure to perform or delayed performance of any part of this agreement if such performance is prevented, hindered, or delayed by reason of any cause beyond the reasonable control of MGI ("Excused Event") including, without limitation, labor disputes, other industrial disturbance, acts of God, shortages of materials, earthquakes, war, riots, public health risk, quarantine, embargoes, laws, actions, restrictions and regulations or orders of any government agency.

3. RESPONSIBILITIES OF CUSTOMER

- 3.1 Notification:** Customer must notify MGI by phone at the main support number (888)489-9959 or by email support@metasystems.org when a problem arises to ensure a timely response.
- 3.2 Off-Site Support:** Customer must provide the system ID number and sufficiently detailed information including error messages to enable MGI to troubleshoot efficiently. When requested, Customer must be available by phone, run diagnostic test software as directed and provide results as well as electronic copies of configuration data, sample images and training data. When and as directed, Customer must be able to receive and load software components transmitted electronically by MGI. When and as directed, Customer must remove or exchange hardware components including filters or electronic boards with customary care to support the process. For on-line support Customer must provide MGI with remote network access to Equipment.
- 3.3 On-Site Service:** Customer must provide MGI reasonable access to Equipment to perform the services required under this agreement. This includes access to servers and workstations with Administrator privilege when necessary. MGI will work with the Customer to schedule maintenance and prevent delays. However, Customer may be billed at prevailing rates for lost time and travel if MGI is not permitted reasonable access to Equipment. Customer must provide a knowledgeable representative with signature authority to accept the satisfactory completion of work performed and to authorize billing when services are provided outside Normal Hours. On-site support is only provided after off-site support was unable to resolve the issue.
- 3.4 Exchange Parts:** When MGI has provided replacement parts on an exchange basis the Customer is responsible for returning the original parts to MGI in a timely manner. When MGI has provided shipping containers the Customer must keep and use them. Exchange equipment not returned after MGI has notified the customer will be billed at their regular price. It is the responsibility of the Customer to protect against damage or loss in transit.
- 3.5 Loaner Equipment:** When MGI has provided loaner equipment the Customer is responsible to treat it with customary care to prevent damage during normal use, and for returning it to MGI without damage in a timely manner after the repair of the original equipment is completed. The Customer must keep and use the shipping containers MGI provided. Loaner equipment and shipping containers not returned after MGI has notified the customer will be billed at their regular price. It is the responsibility of the Customer to protect against damage or loss in transit.
- 3.6 Maintenance, Training:** Customer must observe and apply MGI's instructions and the customary care and maintenance procedures to keep Equipment in good working order including regular backups. Customer must maintain the necessary environmental conditions. Customer must install software updates provided by MGI. Following MGI's initial or subsequent training Customer shall assure that on an on-going basis all current and new users are adequately trained.
- 3.7 Payment:** Customer must pay the total amount due for this Agreement and any additional services within the time frame specified in the invoice to keep the contract in force.
- 3.8 Configuration Changes:** Changes in system configuration by the Customer without consultation with and consent by MGI may compromise system functionality and void the warranty.

4. ADDITIONAL EQUIPMENT

This agreement only applies to Equipment defined in the Service Contract and not to any new MGI products purchased during the term of this contract. New pieces of MGI equipment can be added to this contract upon mutual agreement. The annual service rate for each new piece of equipment which may be added to this agreement will be the standard service rate in effect on the date the new equipment is to be added under this agreement. The total annual service charge will be adjusted to reflect the annual service rate charge for the new equipment.

5. EQUIPMENT LOCATION

Equipment is located at Customer's Facilities as detailed in the Service Contract. Any subsequent resale or move to another location without MGI's approval may result in immediate cancellation of the Contract.

6. DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY

- 6.1: Disclaimer of Warranty:** MGI warrants that the services provided as part of the Service Contract will be free from defects in material and workmanship at the time of installation to the best of our knowledge. MGI makes no other warranties, either express or implied.
- 6.2: Limitation of Liability:** If MGI breaches any warranty or obligation under this Agreement; its sole obligation will be to make all necessary adjustments, repairs and replacements in accordance with the terms of this Agreement and to replace any defective parts installed under this Agreement. MGI shall have no liability for damages under this agreement in connection with any non-functioning or malfunctioning unit of Equipment unless such Equipment fails to function properly for a period of three consecutive months. If Equipment fails to function properly for such three months period, MGI's total liability under this Service Agreement shall be limited to general money damages in an amount not to exceed the prorated annual service rate paid by Customer attributable to such non-function or malfunctioning Equipment for the period in which Equipment fails to function properly. MGI will not be liable for any incidental, special or consequential damages of any nature whatsoever including without limitation, loss of use of Equipment or loss of profits.

7. CHANGE AND TERMINATION

- 7.1 Term:** The term of this Agreement is stated in the Service Contract. This Agreement may be terminated:
 - (a) at any time upon mutual consent by giving 90 days prior written notice of termination.
 - (b) by either party in the event of default by the other party which remains uncorrected for 90 days after notice of such default is given to the defaulting party;
 - (c) by either party upon giving 90 days prior written notice to the other party.
- 7.2 Payments:** If either party cancels, the amount refunded will be determined by prorating the value of the service part of the Agreement, to determine the value remaining on the Agreement, and by deducting our standard charges for service work performed under the Agreement. Software upgrades are not refundable. Multi-year contracts with yearly payments terminated by the customer revert to regular one year pricing and the difference is payable as a buy-out.
- 7.3 Price Change:** For Multi-year contracts MGI may change the price if: (a) the system changes configuration such as when additional equipment is purchased that the customer wants to include in the contract; (b) MGI experiences substantial cost increases due to substantial (>15%) price increases, such as by its vendors, out of MGI's control. MGI may not increase its relative price by more than this cost increase rate. If MGI invokes a price increase on this basis the customer has the option to terminate the contract without buy-out payment.

8. MISCELLANEOUS

- 8.1 Assignment:** Customer may not assign its rights and obligations under this Agreement in full or in part by operation of law or otherwise, without MGI's prior consent. MGI will not assign its rights or obligations under this Agreement without prior notice to Customer.
- 8.2 Written Agreement:** This Agreement supersedes any prior agreements, written or oral, between the parties, contains the entire understanding between the parties and except as provided herein, may be amended or altered only by a mutually signed writing contract.
- 8.3 Governing Law:** This Agreement will be interpreted under the substantive laws of the Commonwealth of Massachusetts. The venue and procedural laws applying to any conflict arising from this Agreement will be determined by a court of competent jurisdiction.
- 8.4 Inspection:** Any Equipment previously covered under warranty or a service agreement which has expired may require a site inspection by MGI to determine the operating status of Equipment in question. The charges associated with this inspection and any necessary repair before the Service Contract can take effect will be billed.
- 8.5 Unenforceable Provisions:** If any part of this Agreement or its application becomes illegal, unenforceable, or void, such provision will be changed and interpreted so as to best accomplish the objectives of that provision to the extent allowed by law, and the remaining provisions of this Agreement will continue in full force and effect.
- 8.6 Counterparts and Facsimile Signature:** This Agreement may be signed in any number of counterparts, but will be considered duly executed when signed by both parties. The parties agree that this Agreement may be duly executed by faxed or electronic signatures.
- 8.7 Controlling Terms:** The terms and conditions of this Agreement will supersede any provisions, terms and conditions contained on any confirmation or purchase order, acceptance, acknowledgment or other writing buyer may give or receive. If buyer's purchase order is used to accept the offer tendered by MGI, the terms and conditions in this Agreement will control and the issuance of the purchase order by buyer will operate as acceptance by buyer of MGI's terms.