

HEIDELBERG ENGINEERING, INC.
INSTRUMENT SERVICE AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS

- A. The term "HEI" means Heidelberg Engineering, Inc.
- B. The word "instrument" means the HEI product or products identified on the front of this Agreement.
- C. "Full Service" means service assistance to resolve a malfunction, such assistance to be provided either by telephone, on-site visit by an HEI technical representative, or at an HEI service center, at HEI's discretion. The following costs and services are not included in "Full Service": 1) the provision of optional retrofits; 2) services connected with equipment relocation; 3) service to or as a result of any personal or host computer not purchased from HEI; 4) repair of laptop computers/docking stations, printers, monitors, workstations and viewstations; 5) adding or removing accessories, attachments, or other devices; 6) exterior painting or refinishing of equipment; 7) performance of normal operator functions as described in HEI Operation Manual(s); 8) repair of damage from any cause other than ordinary use, except damage caused by HEI's negligence; 9) increase in service time resulting from operator neglect or unique application; and 10) other services similar to the above, including without limitation those described in Section 4 of this Agreement.

2. ACCEPTANCE

Unless a separate written agreement is entered between HEI and customer either modifying this agreement ("Agreement") or setting forth which term will control, the following terms and conditions are part of HEI's quotation and shall become the exclusive and binding agreement between HEI and customer with respect to the order of the customer for instrument servicing and maintenance. This Agreement is subject to acceptance by HEI at its office in Franklin, Massachusetts. Notwithstanding anything else to the contrary, HEI is free to accept or reject service orders from customer. Acceptance by HEI shall be deemed to have occurred if HEI does not advise the customer to the contrary within three (3) days of the date on which this Agreement is signed on behalf of the customer. During that three day period, the customer may also cancel this Agreement by notifying HEI in writing at the address shown on the front of this Agreement. After that three day period, this Agreement shall constitute a firm and binding agreement of customer to order and of HEI to perform Full Services covered by this Agreement and shall not be cancelable by either party without the agreement of the other party, unless the other party breaches a material obligation described in this Agreement. Any cancellation of this agreement after that three day period shall result in customer's forfeiture of any unused Agreement Price and customer shall not be entitled to any refund. Neither HEI's acknowledgement of a customer purchase order, nor HEI's failure to object to a customer purchase order or any other document, communication or act of customer will be deemed a waiver of any of these terms and conditions. NO TERM OR CONDITION SET FORTH IN ANY OF CUSTOMER'S SOLICITATIONS OR CUSTOMER PURCHASE ORDERS SHALL BECOME PART OF ANY ORDER OR OTHERWISE BECOME BINDING ON HEI UNLESS EXPRESSLY AGREED TO IN WRITING BY HEI. ANY CUSTOMER PURCHASE ORDER IS ACCEPTED SOLELY ON THE CONDITION THAT CUSTOMER EXPRESSLY ACCEPTS AND ASSENTS TO THE TERMS AND CONDITIONS CONTAINED HEREIN.

3. TERM OF AGREEMENT

- A. The initial term of this Agreement shall be for the Agreement Period provided for herein and shall commence on the later of (i) the Effective Date set forth herein; or (ii) if this Agreement is executed at the time of purchase of the instrument, the expiration of the applicable warranty period for that instrument.
- B. The Agreement Period may be renewed by the parties upon their mutual written agreement. The renewal will be for a new Agreement Period in one year increment, commencing upon the lapse of the then-current Agreement period. The parties may mutually agree to extend the Agreement Period for an unlimited number of times during the term of this Agreement, subject to its terms and conditions.
- C. Failure to renew this Agreement, as provided herein, will result in the termination of all services provided hereunder.

Reinstatement of support benefits will be made only upon the mutual agreement by the parties to so reinstate support and be effective upon payment of the applicable Agreement Price that is in arrears as well as the Agreement Price for the then-current Agreement Period.

4. PRICE, TERMS OF PAYMENT

- A. Customer shall be entitled to the Full Services only during the term of this Agreement and only upon payment of the Agreement Price as set forth on the cover page hereof.
- B. Payment terms are upon receipt.
- C. Customer hereby warrants that all charges incurred will be honored by the applicable credit card company or bank. Customer hereby authorizes HEI to automatically renew the Agreement Period until customer terminates this Agreement in writing by sending HEI a written notice of termination at least thirty (30) days before the then current Agreement Period.
- D. Any local or state sales, use or other taxes (exclusive of income taxes and franchise taxes imposed on HEI) incurred by reason of this Agreement shall be paid by the customer.
- E. HEI reserves the right to withhold, without liability and without prior notice, services provided under this Agreement if the Agreement Price is unpaid, or if customer is delinquent in paying for any other services rendered by HEI or any other amounts due and payable to HEI.

5. CONDITIONS

- A. Service to be provided on the customer's premises is limited to performance during HEI hours of operation. Service at other times is not covered by this Agreement.
- B. HEI shall have full and free access to the instrument to provide the services.
- C. Service provided by HEI outside the scope of this Agreement shall be furnished at HEI's applicable time and material rates and terms then in effect.
- D. This Agreement does not cover consumable parts and supplies (i.e. paper, light bulbs, printer ribbons, ink cartridges, storage media, fuses, etc.). Parts replaced shall become the property of HEI.
- E. If persons other than HEI or its designated service representative perform maintenance or repair of the unit, and as a result HEI determines additional maintenance or repair is necessary, such further repairs will be made at HEI's applicable time and material rates and terms then in effect.
- F. This Agreement does not include the cost of service due to: repair of damage resulting from or attributable to transporting, disassembly or reassembly of the instrument by the customer, neglect or misuse, acts of God, alterations or modifications to the instrument performed by others, the failure of customer to provide and maintain a suitable installation environment (including electrical power, humidity control, temperature control, space, and computer platform and capacity); the use of supplies, materials or third party software not meeting HEI specifications, or the use of the instrument for purposes other than those for which it was specifically designed. In no event shall HEI be responsible for failure to render service hereunder due to causes beyond its reasonable control.
- G. If this Agreement is not renewed and the customer subsequently desires to have the instrument be subject to a Service Agreement, HEI will agree to enter into the Service Agreement only if the customer agrees to have HEI perform an inspection of the instrument at HEI's then current rates and permits HEI to perform any additional services that are needed to restore the instrument to an acceptable condition at HEI's then current rates prior to commencement of the service program.

6. INSURANCE AND WORK ON CUSTOMER PREMISES

If this Agreement requires the presence on the customer’s premises of HEI’s employees, agents, suppliers or permitted subcontractors, HEI shall not be responsible for any loss or damage to property of any kind owned or leased by the customer, its employees, servants or agents. Customer, at its sole cost, shall maintain insurance coverage throughout the entire term of this Agreement with insurance companies and coverage acceptable to HEI.

7. DISCLAIMER OF WARRANTIES

The sole obligation of HEI hereunder shall be to provide service as specified herein. All other warranties of any kind are hereby disclaimed. Nothing in this Agreement shall change, extend or modify HEI’s original instrument warranty. The customer is responsible for the protection and integrity of all patient data, and HEI will not be liable for any loss of patient data. In no event shall HEI be responsible for incidental, special or consequential damages even if it has been advised of the possibility of such damages. The remedies of customer set forth herein are exclusive.

8. PROHIBITION OF INSTRUMENT USE IN HIGH RISK APPLICATIONS

Unless specifically otherwise agreed in writing by HEI, customer acknowledges that instruments sold or serviced by HEI are not intended for and will not be used in high risk applications, including but not limited to, life support systems, human implantation, nuclear facilities or systems, or any other application where product failure could lead to loss of life or catastrophic property damage. Customer will indemnify, defend and hold HEI harmless from any loss, cost or damage resulting from customer’s breach of the provisions of this paragraph, including without limitation attorneys’ fees and costs relating to any lawsuit or threatened lawsuit, arising out of such use.

9. INDEMNITY

Customer shall indemnify, defend, and hold HEI harmless from all claims, damages, expenses, liabilities and losses, including without limitation attorney’s fees and costs incurred, whether or not a lawsuit or other action is filed, that in any way arise out of or relate to any personal injuries, property damages or other losses resulting or occurring from this Agreement or the services provided under this Agreement, except to the extent such personal injuries, property damages or other losses are directly caused by the gross negligence or willful misconduct of HEI or its representatives.

10. LIMITATION OF LIABILITY

HEI SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES SUFFERED BY CUSTOMER AND/OR ANY OTHER PARTY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING FROM THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, THE SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR THE USE OR INABILITY TO USE THE INSTRUMENTS SERVICED BY HEI UNDER THIS AGREEMENT, LOSS OF GOODWILL OR PROFITS AND/OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER FORESEEABLE OR NOT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL HEI’S LIABILITY FOR ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT EXCEED AMOUNTS RECEIVED AND RETAINED BY HEI UNDER THIS AGREEMENT. NO ACTION, REGARDLESS OF FORM, ARISING UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENTS WHICH GAVE RISE TO THE CAUSE OF ACTION.

11. ASSIGNMENT

HEI may assign this Agreement, without the consent of customer, provided that customer shall continue to be entitled to receive service consistent with the provisions of this Agreement from the assignee. Customer may not

assign this Agreement. Any early termination of this agreement shall result in customer’s forfeiture of any unused Agreement Price and customer shall not be entitled to any refund.

12. FEES AND COSTS

Customer will pay HEI’s reasonable costs and expenses relating to the enforcement or preservation of HEI’s rights under this Agreement including reasonable attorney fees.

13. GENERAL

The relationship between customer and HEI is only that of independent contractors notwithstanding any activities set forth in this Agreement. No party is the agent or legal representative of any other party, and no party has the right or authority to bind any other party in any way. Any notice or other communication given hereunder shall be in writing and mailed to the party to which it is directed at its address shown on the front of this Agreement, or to such other address as such party shall have theretofore specified by notice. Such a notice or communication shall be deemed to have been given on the date it is mailed to the other party. This Agreement shall be governed by the laws of the State of Massachusetts without application of its conflicts or choice of law rules, and the customer hereby consents to the exclusive jurisdiction of the state and federal courts located in Boston, Massachusetts, with respect to any dispute that may arise under or relating to this Agreement. No provision of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment, or modification is in writing and signed by the party against whom it is sought to be enforced. This Agreement constitutes the entire agreement between the customer and HEI with respect to the subject matter hereof, regardless of inconsistent or additional terms and conditions in any customer purchase order or other document submitted to HEI, and any prior understanding or agreement with respect to the subject matter hereof, oral or written, is cancelled or merged herein.