

FUJIFILM Medical Systems U.S.A., Inc., Endoscopy Division
Equipment Repair Services
Terms and Conditions

1. **EQUIPMENT.** This Agreement shall only cover the Equipment identified on Schedule A hereto. Equipment will be considered “New” if this Agreement is executed by the Customer within sixty (60) days after receipt of the Equipment. Equipment will be considered “Used” if it does not otherwise qualify as “New” and will further be subject to a prior inspection and approval by FMSU before FMSU can accept Used Equipment for servicing under this Agreement.

2. **COVERED SERVICES.**

(a) Upon the request of the Customer at any time during the Term of the Agreement, FMSU shall repair and restore the Equipment to proper working condition, ordinary wear and tear excepted. Except as listed in Section 3 hereof, FMSU will provide all parts and labor necessary to complete the repair of the Equipment to the manufacturer’s then-current specifications.

(b) The Customer shall notify FMSU Customer Care (1-800-385-4666) in a timely manner once an actual or perceived problem that requires repair of the Equipment is found.

(c) If the repair services cannot be completed on-site at the Customer’s location, the Customer shall properly package the Equipment in accordance with FMSU requirements and ship the Equipment to FMSU via two (2) day Federal Express service using FMSU’s pre-printed Federal Express return label (to be provided upon request). The risk of loss shall pass from the Customer to FMSU upon the receipt of the Equipment by Federal Express and properly packaged.

(d) All repaired Equipment will be shipped from FMSU to the Customer freight pre-paid by FMSU via standard two (2) day delivery. The risk of loss shall pass to the Customer upon delivery to the Customer’s designated location.

(e) FMSU reserves the right to use reconditioned, refurbished and/or serviceable used parts that meet FMSU’s quality assurance standards for repairs hereunder. The use of reconditioned, refurbished and/or serviceable used parts may include, without limitation, replacing or exchanging major components of the Equipment.

(f) In certain cases a FMSU Certified Service Provider, rather than FMSU, will perform services for the Customer. In such event, the FMSU Certified Service Provider shall perform all such services in accordance with the applicable terms of this Agreement; *provided, however*, that all payments from the Customer required under this Agreement shall be paid to FMSU.

3. **EXCLUSIONS.**

(a) This Agreement shall not cover and FMSU shall have no obligation to repair and no liability for: (i) components, parts and materials not manufactured by FMSU; (ii) supplies and consumables, including, without limitation, lamps, valves, video cables and other disposable consumables; (iii) any Equipment which has been disassembled, repaired, tampered with, altered, changed or modified by persons other than FMSU’s authorized service personnel; (iv) Equipment which has been damaged from use for any reason outside of its

intended use; or (v) use of endoscope reprocessing/disinfecting systems and agents prohibited in writing by FMSU with notice of same delivered to the Customer.

(b) FMSU shall determine, in its reasonable discretion whether damage to the Equipment is a result of any of the matters described in clauses (iii) through (v) above and shall notify the Customer of same. Upon the Customer's written request, FMSU may perform repair services for such damages and, if FMSU performs such repair services, the Customer shall pay for such repairs at FMSU's then current time and materials pricing.

4. **OBLIGATIONS OF THE CUSTOMER.**

(a) The Customer will provide FMSU's service personnel access to the Equipment and Loaner Units (as defined in Section 6 below) during normal business hours for the purposes described herein.

(b) The Customer shall provide FMSU with reasonable assistance for diagnosing and correcting Equipment problems by telephone.

(c) The Customer will follow all operating, reprocessing, cleaning and maintenance procedures for the Equipment and Loaner Units as described in FMSU's instruction manuals, and in accordance with all applicable federal, state, and local laws, rules, regulations, industry standards and guidelines (collectively, "**Laws**"). In compliance with Occupational Safety and Health Administration blood borne pathogen regulations and other applicable Laws, the Customer shall reprocess and properly package the Equipment and Loaner Units that come into contact with any potentially infectious material before shipment to FMSU.

(d) The Customer will use the Equipment and Loaner Units (if any) in the manner for which they were intended, in accordance with all applicable manufacturer manuals and instructions, and in compliance with all applicable Laws.

(e) If the Customer requests expedited delivery of the repaired Equipment or Loaner Units, the Customer shall pay for such expedited delivery.

(f) The Customer understands, acknowledges and agrees that the Fee charged by FMSU under this Agreement is based, in part, on the Customer using the Equipment for an expected average number of procedures per day (the "**AUPD**"). The Customer represents and warrants that as of the Effective Date, the AUPD of the Equipment, considered in the aggregate, does not exceed 2.0, and during the Term, will not exceed 3.0. The AUPD shall be calculated on a monthly basis (based upon 22 working days a month) as follows: the number of procedures performed on all units of Equipment owned by the Customer in the applicable month divided by the product of (a) the number of working days in the applicable month and (b) the number of units of Equipment owned by the Customer. As an example, if there are 22 working days in a month and the Customer owns 2 units of Equipment and performs a total of 110 procedures in such month (regardless of how the 110 procedures were allocated between the two units of Equipment), then the AUPD is 2.5.

(g) The Customer shall maintain accurate records of the number of procedures it performs per day using each unit of Equipment. Upon FMSU's request, the Customer shall provide FMSU such records and other documentation necessary to verify the Customer's AUPD. The Customer further agrees that FMSU shall have the right to increase the Fee charged hereunder or terminate this Agreement immediately, in FMSU's sole discretion, in the event that the Customer's AUPD exceeds the limitation set forth above.

5. **FEES.**

(a) The Customer shall pay to FMSU the Fee, as provided herein. Except as otherwise expressly provided herein, all repairs to the Equipment will be performed at no additional charge.

(b) FMSU will invoice the Customer for each payment of the Fee due hereunder except the initial payment which shall be due at the time the Customer executes and delivers this Agreement to FMSU. The Customer shall pay all invoices net thirty (30) days from date of invoice. In the case of installment payments, FMSU will invoice the Customer (i) on the first anniversary of the Effective Date in the case of annual installments, (ii) on each six-month anniversary of the Effective Date in the case of semi-annual installments, (iii) on the first business day of each January, April, July and October in the case of quarterly installments, and (iv) on the first day of each month in the case of monthly installments.

(c) FMSU shall invoice the Customer for additional services expressly provided herein, including, but not limited to, repairs performed pursuant to Section 3(b) hereof, expedited shipping expenses, daily use fees and repairs made to Loaner Units. The Customer shall pay all such invoices net thirty (30) days from date of invoice.

(d) If at any time the Customer fails to pay any amount due under this Agreement when due, then in addition to other rights FMSU might have under this Agreement, FMSU's obligation under this Agreement to perform the repair services described herein shall be suspended until such time as all required payments have been made.

6. **LOANER UNITS.**

(a) The Customer may request that FMSU lend it endoscope units (collectively, the "Loaner Units") on a temporary basis to be utilized at the Customer's site solely while FMSU is repairing the Equipment. FMSU is not obligated to provide the Customer with Loaner Units, but shall endeavor to do so if Loaner Units are available. If FMSU agrees to provide the Customer with Loaner Units, (i) the additional terms and conditions set forth on Attachment 1 hereto shall apply, which Attachment 1 is incorporated herein by reference, and (ii) FMSU shall ship the Loaner Units to the Customer by FMSU's standard method of delivery with freight pre-paid.

7. **TERMINATION.**

(a) Either party may terminate this Agreement at any time without cause or penalty, upon at least 60 days prior written notice to the other party. Any pre-paid fees for services shall be refunded to the Customer on a pro-rata basis as of the effective date of termination.

(b) FMSU may immediately terminate this Agreement or any portion hereof relating to any Equipment whose AUPD exceeds 3.0.

8. **EFFECT OF TERMINATION; RETURN OF LOANER UNITS.**

(a) When this Agreement terminates or expires, or when the Customer no longer has the right during the Term to keep the Loaner Units as more fully described in Attachment 1 hereto, the Customer shall promptly return all Loaner Units (if any) to FMSU by the fifteenth (15th) day after the earlier of (i) termination or expiration of this Agreement or (ii) the date when the Customer no longer has the right to keep the Loaner Units, as the case may be (such fifteenth (15th) day, the "Required Return Date"). When returned to FMSU, the Loaner Units shall be in the same operating order, repair, condition and appearance as when delivered to the Customer,

ordinary wear and tear excepted. In the event that any of the Loaner Units is lost, stolen, or for any reason not returned to FMSU within twenty (20) business days after the Required Return Date, the Customer shall immediately pay to FMSU an amount equal to the replacement value of each such Loaner Unit as reasonably determined by FMSU. This replacement value amount is in addition to any other amounts owed under this Agreement, including, without limitation, amount owed pursuant to the terms and conditions set forth on Attachment 1 hereto.

(b) If this Agreement is terminated prior to the date of expiration, FMSU shall complete any repairs in progress and the Customer shall pay the pro rata portion of the Fee based on the period of time elapsed from the Effective Date through the date of termination.

9. **GOVERNMENT PROGRAM PARTICIPATION.** FMSU represents and warrants that it is not (1) excluded from participating in any “Federal health care program” as that phrase is defined in 42 U.S.C. § 1320a-7b(f) (“**Excluded**”), or (2) debarred, suspended, declared ineligible, or voluntarily excluded by any Federal department or agency (collectively, “**Debarred**”). In the event that FMSU, during the Term of this Agreement, is Excluded or Debarred, FMSU shall notify the Customer in writing within three (3) days after such event. Upon the occurrence of such event, whether or not notice is given to the Customer, the Customer may terminate this Agreement immediately upon written notice to FMSU.

10. **ACCESS TO BOOKS AND RECORDS.** If the Customer pays FMSU Ten Thousand Dollars (\$10,000) or more during any twelve (12) month period within the Term of this Agreement, upon the Customer’s request, FMSU shall retain and make available the contract, books, documents and records which are necessary to verify the cost of the services provided hereunder upon request of the Secretary of Health and Human Services, the United States Comptroller General, the Customer or any of the Customer’s duly authorized representatives for a period of four (4) years after furnishing services pursuant to this Agreement or such other period as required by law. If FMSU carries out any of its duties under this Agreement through a subcontract, FMSU will cause such subcontract to contain a clause that requires the same requirements as this section does for FMSU.

11. **INDEMNIFICATION.**

(a) FMSU shall indemnify, defend and hold harmless the Customer, its directors, officers, employees, and agents, individually and collectively, from all unrelated third party claims and liabilities, damages, costs, and expenses, including reasonable attorneys’ fees, to the extent arising from bodily injury, death or property damage proximately caused by the negligence of FMSU or any of its employees and/or agents who are employed or otherwise engaged by FMSU, in the performance of services under this Agreement.

(b) The Customer agrees to indemnify, defend and hold harmless FMSU, its affiliates and its and their respective directors, officers, employees and agents, individually and collectively, from all unrelated third party claims and related liabilities, losses, damages, costs and expenses, including reasonable attorneys’ fees to the extent caused by or arising from bodily injury, death or property damage proximately caused by the acts or omissions of the Customer or any of its employees and/or agents who are employed or otherwise engaged by the Customer.

12. **LIMITATION OF WARRANTY, LIABILITY AND REMEDY.**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, FMSU MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE EQUIPMENT OR SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE

IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS.

(a) In the event that FMSU is required to repair any Equipment pursuant to this Agreement, and FMSU does not repair and restore such Equipment to its proper working condition (ordinary wear and tear excepted), FMSU shall repair such Equipment again in a good and workmanlike manner such that the Equipment is restored to its proper working condition (ordinary wear and tear excepted). Notwithstanding anything to the contrary set forth herein, such repair is the exclusive remedy under this Agreement for FMSU's failure to repair and restore such Equipment to proper working condition (ordinary wear and tear excepted), and FMSU may repair the Equipment any number of times, but such repairs shall not affect the Term of this Agreement. Except as described in the foregoing sentences, FMSU's total liability for any claim relating to this Agreement shall be limited to the aggregate amount paid by the Customer to FMSU under this Agreement during the twelve (12) month period prior to the date when the claim was made. **IN NO EVENT SHALL FMSU BE LIABLE TO THE CUSTOMER OR ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST BUSINESS, REVENUE OR PROFITS, INTERRUPTION OF BUSINESS, LOSS OF USE OR LOST PRODUCTIVITY, LOST FILES, IMAGES OR DATA, OR DAMAGES TO REPUTATION OR GOODWILL, RELATING TO THIS AGREEMENT, EVEN IF FMSU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IRRESPECTIVE OF THE NATURE OF THE CLAIM ASSERTED.**

(b) If any court having jurisdiction finally holds that this limitation of warranties, liabilities and/or remedies is void or unenforceable, FMSU's liability for any claim shall be limited to the cost paid for the deficient services.

13. MISCELLANEOUS.

(a) Neither FMSU nor the Customer shall assign or transfer this Agreement, including, without limitation, by operation of law (including, without limitation, an assignment or transfer pursuant to or arising from the bankruptcy of the assigning party), consolidation, merger or otherwise without the prior written consent of the other party. Notwithstanding the foregoing, either party may, with written notice to the other party, assign its obligations under this Agreement to its parent company or any of its affiliates, provided that the assigning party remains fully liable under this Agreement for performance, and further provided that, with respect to the Customer, the Customer must be current in all payments due hereunder prior to any purported assignment. Any assignment not in compliance with this paragraph shall be null and void.

(b) FMSU shall not be responsible or liable for any failure to perform hereunder if such failure is caused by acts of God, acts of government, shortages of parts, strikes or labor disputes, failures of transportation, fire or flood or casualty, failures of subcontractors or suppliers, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) that are beyond FMSU's reasonable control.

(c) This Agreement and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall be governed by the substantive laws of the State of New York without regard to the conflict of laws rules thereof (including, without limitation, its statutes of limitations) that would result in any other jurisdiction's laws being applied. The parties hereto agree that the State and Federal courts of the State of New York shall have exclusive jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this Agreement, the breach thereof or to the relationship created thereby. The parties expressly and irrevocably submit and consent in advance to such jurisdiction in any action or proceeding relating to this Agreement, hereby waiving personal service of the summons and complaint or other process.

(d) The Customer acknowledges that, when entering into this Agreement, FMSU has relied upon the Customer's representation that the Equipment and Loaner Units will be used only by the Customer and only for business purposes. The Customer represents that it has the power to enter into this Agreement and that the person executing this Agreement on behalf of the Customer has been duly authorized and has all required corporate approvals.

(e) This Agreement (including the attached schedules) is the complete agreement of the parties with regard to the subject matter hereof, and supersedes all prior or contemporaneous oral or written proposals, communications, understandings and agreements regarding such subject matter. No amendment, change, modification or alteration of the terms and conditions hereof shall be binding unless documented in writing and signed by authorized representatives of both parties. No officer or other representative of FMSU is empowered to modify this paragraph orally.

(f) FMSU and the Customer agree that the provisions contained in this Agreement are severable and divisible, that each such provision does not depend upon any other provision for its enforceability, and that each such provision set forth herein constitutes an enforceable obligation between the parties hereto. Consequently, the parties hereto agree that neither the invalidity nor the unenforceability of any provision of this Agreement shall affect the other provisions, and this Agreement shall remain in full force and effect and be construed in all respects as if such invalid or unenforceable provision were omitted.

(g) The waiver of a breach of any provision of this Agreement will not be a waiver of any subsequent breach of the same or any other provision hereof.

(h) Contrary or additional terms and conditions contained in any purchase order or other communication sent by the Customer to FMSU shall be of no effect.

(i) In the event FMSU seeks collection of any amount due under this Agreement, FMSU shall be entitled to receive from the Customer all reasonable attorneys' fees, costs of suit, and disbursements incurred in connection therewith.

(j) Each party hereto acknowledges that it has had ample opportunities to review this Agreement. This Agreement shall be read and interpreted according to its plain meaning and any ambiguity shall not be construed against either party. It is expressly agreed by the parties that the judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Agreement. The headings contained herein are for reference only and are not a part of this Agreement and shall not be used in connection with the interpretation of this Agreement. Delivery of an executed counterpart of this Agreement by facsimile transmission or in PDF format shall be as effective as delivery of an originally-signed counterpart of this Agreement.

(k) All notices permitted or required to be given under the terms of this Agreement shall be sent by personal delivery, United States Mail (certified postage prepaid, return receipt requested), or overnight delivery by a reputable carrier, and addressed as set forth on the first page above. Such notices shall be deemed given hereunder on the date of delivery thereof (or date of non-acceptance).

[Rest of page intentionally left blank. Attachment 1 begins on next page]

Attachment 1

Additional Terms and Conditions Governing the Loaner Units

1. Loaner Units will be solely utilized by the Customer at the site location where the Loaner Units were shipped by FMSU (the "Site"). The Customer will be responsible for the cost of all consumable products to be used in connection with the Loaner Units, if any.
2. The Customer can only use the Loaner Units during the time that commensurate Equipment is being repaired by FMSU or one of its authorized service providers. Within fifteen (15) days after the Customer receives its repaired Equipment, the Customer must return the Loaner Units to FMSU at its Wayne, NJ offices using FMSU's Federal Express return labels. If the Customer does not return the Loaner Unit within such time, then FMSU may charge daily use fees up to \$250 per day as a late fee, but not as a penalty, commencing on the sixteenth (16th) day following delivery of the repaired Equipment to the Customer until all of the Loaner Units are returned to FMSU.
3. The failure to return the Loaner Units within the fifteen (15) day period referenced above may be subject to public disclosure by FMSU pursuant to the Physician Payment Sunshine Act ("PPSA") or other similar laws. If required by applicable law and if the Customer fails to return the Loaner Units within the fifteen (15) day period referenced above, FMSU will report the value of the Loaned Units (beginning on the sixteenth (16th) day following delivery of the repaired Equipment to Customer) in accordance with applicable law.
4. Title to the Loaner Units is and will at all times remain with FMSU. The Customer will at all times keep the Loaner Units free and clear of all liens, attachments, encumbrances, charges, levies and other judicial process of any kind whatsoever. The Customer acknowledges that it has no rights of ownership, title or equity in any of the Loaner Units. FMSU may mark the Loaner Units as its property and the Customer will not remove or obscure any markings of FMSU's ownership. The Customer hereby authorizes FMSU and/or its agent to create, sign, and execute on behalf of the Customer any and all UCC-1 forms or other similar documents and amendments as may be necessary to notify third parties of, or perfect, FMSU's interest in each of the Loaner Units.
5. The Customer will be responsible for installation of the Loaner Units at the Site and the Customer will be responsible for the space, electricity and other utilities necessary for installation of the Loaner Units pursuant to FMSU's technical specifications. Under no circumstances will the Customer remove, or cause to be removed, any of the Loaner Units from the Site without the prior written consent of FMSU.
6. The Customer will ensure that all patient data are removed from the Loaner Units prior to shipping them back to FMSU, and will comply with all applicable Laws regarding the privacy of such data, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as the same may be amended from time to time. In the event that any of the Loaner Units are not in the same operating order, repair, condition and appearance as when delivered to the Customer, ordinary wear and tear excepted, FMSU will invoice the Customer the value of the repairs and parts necessary to return each such Loaner Unit to the same operating order, repair, condition and appearance as when delivered to the Customer and the Customer will pay such invoice within thirty (30) days of receipt thereof; provided, however, that if in FMSU's discretion any of the Loaner Units is beyond repair, FMSU will invoice the Customer the replacement value of each such Loaner Unit and the Customer will pay such invoice within thirty (30) days of receipt thereof.
7. The Customer will not attempt to disassemble, decompile, reverse engineer or derive source code from all or any portion of the Loaner Units, and will not permit or encourage any third party to do the same, at any time.

8. The Loaner Units are not considered “Equipment” for purposes of this Agreement and therefore, the Loaner Units are not covered by the services under this Agreement unless the Loaner Units themselves are expressly listed on Schedule B hereto with its serial numbers and identified as Loaner Units.

9. FMSU IS PROVIDING THE LOANER UNITS ON AN “AS IS” BASIS AND WILL MAKE NO WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO ANY OF THE LOANER UNITS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF ANY PROPRIETARY RIGHTS OF ANY THIRD PARTY.

10. Customer does not have any rights to any intellectual property and proprietary rights in or to any of the Loaner Units, and any improvements thereto or modifications thereof will be considered to be developed solely and independently by FMSU.