

## TIMS DICOM SYSTEM SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

These TIMS DICOM System Support and Maintenance (“TIMS Support Services”) Terms and Conditions apply to the support services described below that are offered by Foresight Imaging and/or its affiliates (“the Company”).

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE ELECTING TO PURCHASE ONE OR MORE OF THE TIMS SUPPORT SERVICES AND PAYING THE ASSOCIATED INVOICE YOU WILL RECEIVE FROM AN AUTHORIZED COMPANY RESELLER OR FROM THE COMPANY DIRECTLY. THE COMPANY’S AGREEMENT TO PROVIDE THE SERVICES THAT YOU HAVE ELECTED TO PURCHASE IS EXPRESSLY MADE CONDITIONAL UPON YOUR ASSENT TO THESE TERMS AND CONDITIONS, AND YOUR ACCEPTANCE OF ANY SUCH SERVICES FROM THE COMPANY CONSTITUTES YOUR ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

### 1.0 DEFINITIONS

1.1 “Authorized Reseller” means a commercial reseller of Foresight Imaging products that is currently authorized by the Company to act as such.

1.2 “Confirmation Letter” means the letter sent by the Company to the Customer which confirms the Company’s acceptance of the Customer’s purchase of TIMS Support Services and lists the services purchased and the Software Products to which the services apply. The Company will provide only those services described in these Terms and Conditions that are set forth in the Confirmation Letter, and then only with respect to the Software Products also listed therein.

1.3 “Program License” means the Company’s standard end-user software license agreement applicable to the Software Products and Software Updates. In the case of software programs owned and licensed by third parties, “Program License” means the end-user software license agreement supplied by such third-party licensor.

1.4 “Software Products” means the software programs licensed to the Customer by the Company (or by a third-party licensor) and described in the Confirmation Letter. Only those Software Products (and related Software Updates) set forth in the Confirmation Letter are covered by the applicable services provided hereunder.

1.5 “Software Updates” means the software programs licensed by the Company that are generally offered and expressly designated by the Company, in its sole discretion, as updates to specified Software Products. Software Updates generally consist of product enhancements, improved performance and error corrections that the Company has determined, in its sole discretion, to provide with respect to specified Software Products. Documentation may be provided in electronic format only.

### 2.0 TERM AND TERMINATION

2.1 The services purchased by the Customer will commence upon acceptance by the Company (which shall notify the Customer in the Confirmation Letter). The Confirmation Letter will also state the termination date for each of the purchased services.

2.2 The Company’s obligations will cease automatically upon the termination or expiration of each specified service, or upon the termination of the Customer’s Program License applicable to the Software Products, License Key, or Software Updates in accordance with its terms. The Company’s obligations will cease if the Customer assigns or otherwise transfers any Software Product (including Software Updates and License Keys, if applicable) or related Company hardware components covered hereunder (whether or not permitted by the applicable Program License) without the Company’s prior written consent. TIMS Support Services cover one person on one system for one year. No refunds will be made as a result of any termination or expiration of services hereunder for any reason.

### 3.0 TIMS SUPPORT SERVICES

Set forth below are descriptions of the Company’s TIMS Support Services. Not all services are available in all locations and for all products.

#### 3.1 Software Updates

3.1.1 This service provides that the Customer will be entitled to receive Software Updates on the Products listed in the Confirmation Letter. The Company is only obligated to make Software Updates available via download from its website. The Company may, at its sole discretion, make Software Updates available via other media for an additional charge to be determined by the Company.

3.1.2 The Company will not be obligated to deliver to the Customer any Software Updates that are not compatible with the Customer's Company hardware components, nor shall the Company be obligated to release updates to Software Products that the Company has not elected, in its sole discretion, to release or offer to customers generally.

3.1.3 The timing of the release of Software Updates will be determined by the Company in its sole discretion. The Company may from time to time make particular error corrections available electronically from its website. The Company will be under no obligation to release a Software Update in diskette or CD-ROM format containing any such "error correction" contemporaneously with such posting.

3.1.4 The Customer's use of each Software Update is governed by and subject to the Program License applicable to the related Software Product. Software Updates are subject to the warranty (including its limitations and disclaimers) included in the applicable Program License.

## **3.2 Technical Support**

3.2.1 This service provides that the Company will provide telephone assistance to the Customer for the Software Products listed in the Confirmation Letter. The Company will provide telephone assistance only on the most current version of the Software Products and the prior version.

3.2.2 Calls for telephone assistance to the U.S. Technical Support Center can only be accepted from 8:00 A.M. to 8:00 P.M., EST, Monday through Friday, excluding Company recognized holidays and during company and departmental meetings. The Company will provide telephone assistance within a reasonable period of time after the Customer adequately describes a problem with the Software Product to the Company's Technical Support Center.

3.2.3 The Company will provide telephone assistance as described above for Company hardware components used in conjunction with the Software Products listed in the Confirmation Letter. This assistance will be with respect to board setup and changes in installation and configuration.

3.2.4 The Company will provide web-based (if available at Customer site) and email assistance from the U.S. Technical Support from 8:00 A.M. to 8:00 P.M., EST, Monday through Friday, excluding Company recognized holidays and during company and departmental meetings. The Company will make reasonable efforts to respond within 1 (one) business day.

3.2.5 The Company will be obligated to provide service in accordance with this Section 3.2 only for Software Products that are used in the recommended operating environment and system in accordance with the technical requirements specified in the hardware and software documentation. THE COMPANY RESERVES THE RIGHT TO CANCEL OR DENY SERVICE DESCRIBED IN THIS SECTION 3.2 WITHOUT ANY REFUND IF THE CUSTOMER REQUESTS SERVICE FOR SOFTWARE PRODUCTS THAT ARE BEING USED IN CONJUNCTION WITH NON-APPROVED CPU'S AND PERIPHERALS.

## **3.3 Quick Turn Repair and Depot Exchange Program**

3.3.1 Calls to the U.S. Technical Support Center concerning the Quick Turn Repair and Depot Exchange Program can only be accepted from 8:00 A.M. to 8:00 P.M. EST, Monday through Friday, excluding Company recognized holidays.

3.3.2 The Company will in its sole discretion determine whether to Repair or Exchange the TIMS computer. Monitors, keyboards, mice, cables, and related accessories are not covered by TIMS Support Services. These items are covered exclusively by their manufacturer's warranty. Consult the sales department for the individual product's manufacturer's warranty. This repair or exchange program shall not apply to defects or failures due to accident, neglect or misuse; any party other than FORESIGHT IMAGING modifying, adjusting, repairing or servicing the TIMS computer and failure to provide a suitable installation environment.

3.3.3 The Company will, at its own expense, if after determining that a Replacement TIMS computer needs to be sent, ship via express courier the TIMS computer (the "Replacement") that are comparable (but not necessarily identical) to the TIMS computer being returned to the Company for credit, any remaining warranty or support services purchased by the Customer will be transferred to the Replacement retained by the Customer, as appropriate. The Company will use commercially reasonable efforts to ship the Replacement, or Repair after receiving the TIMS computer from the Buyer, within two business days to a U.S. site, or courier for international customers. The Customer is responsible for any applicable Duties, Taxes and International shipping charges, if applicable.

- 3.3.4 Within two (2) business days of receiving the Replacement, the Customer must, at its own expense, package and ship the corresponding TIMS computer to the Company for credit using a one- or two-day delivery service of its choice. The Customer bears the risk of loss or damage with respect to such items while in transit, and return of items to the Company will be deemed to have been made only when such items are actually received by the Company. Failure to return the TIMS computer for credit upon receipt of the Replacement will result in a charge to the Customer for the purchase of a new TIMS computer.
- 3.3.5 The Company's obligation to provide a Repair or Replacement to the Customer on a timely basis is subject to availability within the Company, and the Company is not responsible for delays beyond its reasonable control.

#### **4.0 CUSTOMER'S GENERAL RESPONSIBILITIES WITH RESPECT TO ELECTED SERVICES**

4.1 The Customer shall give the Company reasonable free access to its equipment, the Software Products and Software Updates and all relevant documentation and records, and shall provide such assistance as the Company may reasonably request, including sample output and other diagnostic information, in order to assist the Company in performing its obligations hereunder.

4.2 The Customer shall use the Software Products (including Software Updates, if applicable) in the recommended operating environment and system in accordance with the technical requirements specified in the hardware and software documentation. It is also the Customer's responsibility to have adequate knowledge of and proficiency with the operation of the computer platform and operating system as well as the peripheral equipment used in conjunction with the Software Products.

4.3 The Customer shall, to the best of the Customer's ability, read, comprehend and follow operating instructions and procedures specified in the Company's documentation related to the Software Products, and follow procedures and recommendations provided by the Company's Technical Support Center in an effort to correct problems. The TIMS Support Services is not intended to provide the Customer with training on the Software Products.

4.4 The Customer will designate a single individual at each relevant location as the Company's contact. All communications by the Customer to the Company in connection with the foregoing services will be made by the designated contact person. The Customer will promptly notify the Company in writing of any change in this contact person.

4.5 The Customer agrees that the rights granted to the Customer, the use limitations and the Customer's responsibilities to prevent unauthorized disclosure specified in the Program Licenses applicable to the Software Products apply with equal force and effect to all service elements, such as corrective codes, enhancements and Software Updates that are provided to the Customer hereunder.

4.6 If the Customer requests any maintenance or service not covered by these Terms and Conditions, and the Company agrees to provide such service, the Customer will be billed at the Company's prevailing billing rate to be determined at time of the request. Charges must be remitted using approved credit or charge card.

#### **5.0 EXCLUSIONS AND LIMITATIONS**

5.1 The Company does not warrant that any Software Product or Software Update will meet the Customer's requirements or be error-free. The Company's obligation to provide TIMS Support Services hereunder shall be limited to commercially reasonable efforts to perform its obligations hereunder. The Company is not responsible for costs or expenses incurred in acquiring additional hardware or software (including additional memory or similar items) in connection with the use of Company products covered hereunder, whether or not Company personnel suggest the use of such additional hardware or software is advisable.

5.2 The Company shall have no obligation to provide TIMS Support Services hereunder with respect to Software Products and related Company hardware components that were not purchased as new by the Customer directly from the Company or an Authorized Reseller. The Customer agrees that any transfer or assignment (whether or not permitted by the Company) of any Software Products or Software Updates or related hardware equipment covered hereunder to another party shall be without liability or warranty or any other obligation on the part of the Company

5.3 The Company shall have no obligation to provide TIMS Support Services hereunder that are required by any of the following: (a) abuse, misuse or neglect; or (b) repairs, alterations and/or modifications which are not permitted by the Program License and which are performed by other than the Company or an Authorized Reseller; or (c) use of the Software Products and related Company hardware components in conjunction with

computer platform, operating system and peripherals that have not been approved by the Company; or (d) malfunction or modification of peripherals used in conjunction with the Software Products and related Company hardware components; or (e) failure by the Customer to follow operating instructions and procedures specified in the Company's documentation related to the Software Products or to follow procedures and recommendations provided by the Company's Technical Support center in an effort to correct problems.

## **6.0 LIMITATION OF LIABILITY AND REMEDIES**

6.1 IN CONNECTION WITH THE TIMS SUPPORT SERVICES RENDERED AND COMPUTER SOFTWARE AND DOCUMENTATION SUPPLIED HEREUNDER, THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, ORAL OR WRITTEN, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, ALL OF WHICH THE COMPANY SPECIFICALLY DISCLAIMS.

6.2 THE COMPANY'S CUMULATIVE LIABILITY HEREUNDER FOR ALL CAUSES OF ACTION SHALL BE LIMITED TO AND NOT EXCEED THE FEES PAID BY THE CUSTOMER FOR THE TIMS SUPPORT SERVICES HEREUNDER, REGARDLESS OF WHETHER THE COMPANY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR THAT ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE IN CONNECTION WITH THE TIMS SUPPORT SERVICES RENDERED AND COMPUTER SOFTWARE AND DOCUMENTATION SUPPLIED HEREUNDER FOR (1) SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, COVER OR TORT DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OF DELIVERY, OR FROM PRODUCTS NOT BEING AVAILABLE, LOSS OF DATA OR LOSS OF PROFITS, BUSINESS, INVESTMENT OR GOODWILL, OR (2) ANY CLAIM THAT AROSE MORE THAN ONE YEAR PRIOR TO THE INSTITUTION OF SUIT THEREON. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE FEES PAID BY THE CUSTOMER FOR THE SERVICES HEREUNDER REFLECT THIS ALLOCATION OF RISK.

6.3 The Company shall be relieved of its obligations to perform in the event that Acts of God, labor disputes, shortages of materials, unavailability of transportation, failure of telephone service or electrical power, acts or omissions of vendors or subcontractors, or other causes beyond its reasonable control cause a delay or render performance by the Company impracticable or impossible.

## **7.0 GENERAL**

7.1 The Company retains the right to subcontract any TIMS Support Services described herein to subcontractors it selects.

7.2 The Customer may not assign any of its rights hereunder without the express written consent of the Company. For purposes of the preceding sentence, the term "assign" shall include, without limitation, a merger, sale of assets or business, or other transfer of control by operation of law or otherwise. These Terms and Conditions are binding on and, subject to first sentence of this clause, inure to the benefit of the parties, their successors and assigns.

7.3 These Terms and Conditions, together with the Confirmation Letter, set forth the entire agreement and understanding between the Customer and the Company as to the subject matter hereof, and neither the Customer nor the Company shall be bound by any conditions, definitions, warranties, understandings or representations, oral, written or otherwise, with respect to such subject matter other than as expressly provided herein, or as duly set forth in a subsequent writing signed by a duly authorized representative of the party to be bound.

7.4 Notices to Customer shall be sent to the address specified in the Confirmation Letter and to the Company shall be sent to: Foresight Imaging, Attn: Customer Service, 70 Industrial Avenue, Lowell, MA 01852, U.S.A. Notices to the Company of any change in address can be made in writing on the Customer's letterhead or by email or phone.

7.5 These Terms and Conditions shall be governed by and construed in accordance with the procedural and substantive laws of the Commonwealth of Massachusetts, excluding its conflicts of laws provisions. The parties agree that the UN Convention on Contracts for the International Sale of Goods is specifically excluded from application hereto.

**8.0 TIMS Support Services Renewals**

8.1 Customer may purchase additional years of TIMS Support Services as listed below.

<b>Description</b>	<b>Part Number</b>
<b>TIMS Support &amp; Maintenance - Year 2</b>	<b>081000-2</b>
<b>TIMS Support &amp; Maintenance - Year 3</b>	<b>081000-3</b>
<b>TIMS Support &amp; Maintenance - Year 4</b>	<b>081000-4</b>
<b>TIMS Support &amp; Maintenance - Year 5</b>	<b>081000-5</b>
<b>TIMS Support &amp; Maintenance Bundle - Years 2-5</b>	<b>081000-555</b>
<b>TIMS DICOM Gateway Software Support &amp; Maintenance, 1 Year</b>	<b>081000-12</b>
<b>Technical Support Only - One Year</b>	<b>081000-13</b>
<b>Software Upgrades Only - One Year</b>	<b>081000-600</b>
<b>TIMS Technical Support Only - One Incident</b>	<b>081000-14</b>
<b>TIMS Consultant Support &amp; Maintenance - One Year</b>	<b>083000-1</b>

8.2 The purchase of the current year of TIMS Support Services may require the purchase of prior years of TIMS Support Services if the support contract has lapsed.

8.3 The TIMS Support Services Bundle must be purchased within one year of the TIMS DICOM System purchase.