

# Morgan Scientific, Inc. Support and Software Maintenance Services, Supplemental Terms

Effective Date: March 15, 2022. This update supersedes the previous versions of the document. This update supersedes the previous versions of the document. To verify you have the latest version of this document, visit <https://www.morgansci.com/legal/software-support-maintenance/>.

IN CONJUNCTION WITH YOUR PURCHASE OF USE AND SUPPORT LICENSES FOR MSI SOFTWARE, YOU AGREE TO THESE SUPPLEMENTAL TERMS FOR SUPPORT AND SOFTWARE MAINTENANCE SERVICES (“SERVICES”) WHICH ARE HEREBY INCORPORATED INTO THE END USER LICENSE AGREEMENT (“EULA”) BETWEEN MORGAN SCIENTIFIC, INC. (“MSI”) AND YOU (“YOU”), THE CUSTOMER (“CUSTOMER”). MSI MAY REVISE THESE SUPPLEMENT TERMS (THE “AGREEMENT”) FROM TIME TO TIME BY PUBLISHING SUCH UPDATES AT <HTTPS://WWW.MORGANSCI.COM/LEGAL/SOFTWARE-SUPPORT-MAINTENANCE/>. IN THE EVENT THAT MSI MAKES ANY REVISION THAT INCLUDES A MATERIAL CHANGE TO THESE SUPPLEMENTAL TERMS DURING YOUR CURRENT ANNUAL SUBSCRIPTION TERM (“CHANGE”), MSI WILL SEND COMMUNICATIONS VIA IN-PRODUCT NOTICES OR EMAIL TO REGISTERED EMAIL ADDRESSES OF NAMED CONTACTS OR WILL POST COMMUNICATIONS TO MSI’S WEBSITE. YOU MAY NOTIFY MSI OF YOUR PREFERENCE NOT TO RECEIVE ANY SUCH COMMUNICATIONS (WHICH MAY HAVE A TECHNICAL IMPACT ON YOUR USE OF THE SOFTWARE AND THE PROVISION OF ANY SUPPORT SERVICES). MSI RESERVES THE RIGHT, AT ANY TIME AND FROM TIME TO TIME, TO REVISE, SUPPLEMENT, AND OTHERWISE MODIFY THIS AGREEMENT AND TO IMPOSE NEW OR ADDITIONAL RULES, POLICIES, TERMS, OR CONDITIONS (COLLECTIVELY, “ADDITIONAL TERMS”). SUCH ADDITIONAL TERMS WILL BE EFFECTIVE IMMEDIATELY AND INCORPORATED INTO THIS AGREEMENT UPON POSTING THE REVISED AGREEMENT ON MSI’S WEBSITE AND YOU WAIVE ANY RIGHT TO RECEIVE A SPECIFIC NOTICE OF EACH SUCH REVISION. YOUR USE OF THE SUPPORT AND SOFTWARE MAINTENANCE SIGNIFIES ACCEPTANCE OF THE AGREEMENT INCLUSIVE OF FUTURE REVISIONS.

IF YOU SOMETIMES RECEIVE SOME OF YOUR SUPPORT DIRECTLY FROM AN AUTHORIZED SUPPORT DELIVERY PARTNER, THESE SUPPLEMENTAL TERMS SHALL STILL APPLY AS PART OF YOUR AGREEMENT WITH MSI. ANY OTHER BENEFITS YOU RECEIVE FROM OUR PARTNERS SHALL BE IN ADDITION TO, OR, UPON MUTUAL AGREEMENT BY YOU AND THE PARTNER, IN LIEU OF, YOUR ENTITLEMENT UNDER THIS AGREEMENT. IN ADDITION, THE PARTNER MAY ALSO DIRECTLY ACCESS THE BENEFITS PROVIDED UNDER THIS AGREEMENT, WORKING ON YOUR BEHALF.

## 1. Overview

- 1.1. MSI offers Support and Software Maintenance bundled with the purchase of Software Licenses on an annual or monthly basis. Support provides a resource for You to receive assistance regarding installation, standard product configuration and

the usage of MSI Software. Software Maintenance entitles You to receive the latest software Updates and Upgrades, except where the latter is otherwise limited by certain provisions herein.

## 2. Interpretation

2.1. Definitions. In this Agreement, the following capitalized terms shall have the following meanings set out below:

“Case” means the MSI ticketing system used to track communications with You regarding Your Incidents and to track information You have provided us such as log files, screen shots, Incident details, and troubleshooting actions taken.

“Documentation” means, collectively, the official product operation instructions, release notes and user manuals provided by MSI for the Software, in electronic or written form, that MSI has made publicly available.

“EMR Interface” means software code or scripts that allow communication or data sharing between MSI Software and Your electronic medical records system(s).

“Error” means a reproducible failure of a properly licensed, implemented, and used MSI product to perform in substantial conformity with its accompanying Documentation.

“Extended Business Hours” means 6:00AM to 6:00PM Eastern Time, Monday through Friday, excluding Company Holidays.

“Incident” means a single Support issue, generally an Error, or usage question with an MSI product and the reasonable effort needed to resolve it.

“Maintenance” means the provision of Updates and Upgrades for the Software. For clarity, Maintenance does NOT mean hardware maintenance.

“MSI Hardware” means the pulmonary function testing hardware devices directly distributed by MSI.

“MSI Products” means the MSI Licensed Materials, Services, or MSI Hardware

“Normal Business Hours” means regular MSI operating hours of 8:00AM to 5:00PM Eastern Time, Monday through Friday, excluding Company Holidays.

“PFT” means pulmonary function testing.

“PFT Hardware” means PFT hardware devices, generally, with which MSI Software communicates directly or for which MSI Software can import and manage clinical diagnostic data.

“Phone Support” means Support that is initiated via Customer phone call, or via call-back from MSI.

“Predicted Set” means predicted normal values used for reference and basis of comparison in pulmonary function testing.

“Product Specialist” means an MSI support representative with subject matter expertise in MSI Products and their end use.

“Software” means the object code form of the MSI proprietary software product(s) made available by MSI under the Agreement, and including any Documentation, Updates, and Upgrades.

“Resolution” means either a software modification or addition that, when made or added to the Supported Product, corrects a Supported Incident; or a work-around, procedure or routine that, when observed in the regular installation or operation of

the Software, eliminates the practical adverse effect of such Supported Incident on Customer; or replacement of the Supported Product. (Resolutions may include patches and bugfixes).

“Software Environment” means collectively, the platform and environment on, in, or under which Software is intended to be installed and operate, including such structural, functional and other features, conditions and components as hardware, operating software and system architecture and configuration.

“Support” means the MSI-provided customer service designed to resolve Errors and Incidents in the installation, configuration, and usage of the Software, but does not include any type of assisted deployment, design particular to bespoke requirements, or assistance with Third-Party Products being used in conjunction with the Software.

“Support Engineer” means Product Specialist.

“Supported Products” means MSI Hardware, and the current version of the Software and any prior version for which MSI provides support.

“Supported Incidents” means a material defect in materials and workmanship of the Supported Products, or failure of the Supported Product to conform to the specifications set forth in the Documentation relating to that version of the Supported Product, resulting in the inability to use, or restriction in the use of, the Supported Product.

“Supported Third Party Products” means any third-party product that is supported as per the Documentation.

“Third Party Software” means any software that is manufactured by a party other than MSI and is either (i) not delivered with the Software, or (ii) not incorporated into the Software.

“Training” means a structured process by which an end user is taught knowledge and skills that are not specific to MSI Software.

“Update” means bug fixes, minor enhancements, corrections, patches, and functions added to or removed from the Software, not including any new software or functionality that MSI markets and sells separately.

“Upgrade” includes major releases of products that replace a prior version of that product.

2.2. Use of the singular includes the plural (and vice versa) and use of any gender includes the other genders.

2.3. Unless otherwise defined herein, the capitalized terms used in this Agreement shall be defined in the context in which they are used. Given any ambiguity of terms, they shall be interpreted in the context of the medical software and pulmonary function testing industries, the primary industries where MSI Products are marketed and used.

### **3. Support Term, Renewal, Termination, & Payments**

3.1. Support Services are bundled with, and fully coterminous with, the Use and Support License (“Subscription License”) established by the Morgan Scientific, Inc. End User License Agreement (“EULA”), found at: <https://www.morgansci.com/legal/end-user-license-agreement/>. ALL PROVISIONS REGARDING THE TERM, RENEWAL,

TERMINATION, AND PAYMENT OF SUPPORT SERVICES SHALL BE GOVERNED BY THE EULA AND SHALL PREVAIL OVER THIS SUPPLEMENTAL AGREEMENT.

- 3.2. MSI reserves the right to limit the overall term length of support and maintenance services for specific software and hardware versions. Limits shall be based on multiple factors such as technical characteristics, regulatory requirements, supported product versions, commercial prudence, and software environments. You shall be notified of term limitations. All notices shall be in writing and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered mail (return receipt requested); (iii) two (2) days after it is sent if by overnight delivery by a major commercial delivery service or (iv) e-mail with suitable electronic receipt or proof of transmission. As a business practice, MSI shall endeavor to provide end-of-life notices, twenty-four (24) and twelve (12) months prior to end of support, respectively, however its obligation to necessarily do so is non-binding, as long as good faith efforts are made, and general notice is also available on the MSI website or via other public means of notice. Generally, MSI's minimum targeted support term for Supported Products is seven (7) years from the date of purchase.

#### **4. Support Services**

- 4.1. The end use of MSI Products is driven by Software. MSI's approach to support is a "software first" approach. For clarity, this Agreement does not entitle You to MSI Hardware field service, bench service, or hardware preventive maintenance services, all of which are available separately for a fee.
- 4.2. Software-Hardware PFT solution support. This Agreement entitles You to general support of MSI's combined software-hardware PFT solutions, such as issues or questions pertaining to calibration, results, cleaning/disinfection, accessories, software-based instrument diagnostics, and Resolution of common software-hardware problems and faults such as those covered in the Documentation. If, after conducting good faith efforts to assist with hardware issues via remote means, MSI Product Specialists determine You require hardware service, they will inform You of next steps and estimated fees and/or facilitate a transfer of your Case to the MSI Service Department.
- 4.3. End User Support. This Agreement entitles You to direct support pertaining to the clinical use, operation, and troubleshooting of MSI Products. Generally, MSI will provide You support with: (i) application of pulmonary function concepts to system use; (ii) general software use; (iii) patient biographicals and biometrics; (v) PFT testing configurations, calibrations, instrument diagnostics, testing maneuvers, cleaning, test quality; (vi) other tests including cardio-pulmonary exercise, ancillary tests, supplemental measures, supported third-party systems; (vii) reports; (viii) notes/notepads/comments; (ix) provider interpretation and digital workflows; (x) configurations; and (xi) database utilities.
- 4.4. Software Application support. MSI will provide Software application support in the following areas: (i) installation; (ii) system configurations; (iii) security and permissions; (iv) runtime errors; (v) performance issues; (vi) Software display issues; (vii) compatibility; (viii) application virtualization; (ix) deployment issues. Due to some

- conditions outside of our control, MSI may only be able to advise on possible solutions to performance, display, or compatibility issues if it involves information systems.
- 4.5. Software Updates. MSI will provide software update validation assistance and implementation assistance.
  - 4.6. Software Installation. Courtesy installation may be requested via secure remote access to Your device and when provided adequate privileges. Limited to one (1) Incident per annum per License Seat. Additional installation services are available at prevailing rates.
  - 4.7. Information Systems (IS) support. MSI will provide Information Systems (IS) support in the following areas so long as in direct support of MSI Software: (i) configurations; (ii) security/permissions; (iii) backup/restore, (iv) administration; (v) database or server migration; (vi) host-remote connectivity. MSI is not an IS administration or IS service provider. MSI offers a supporting role only, and it is Your responsibility to administer Your Information Systems.
  - 4.8. Project Management and Documentation. MSI will participate in IT/IS project management meetings and/or documentation that is deemed to be usual, customary, commensurate with, and proportional to, the overall scope of the Customer's Use and Support Licensing. Any Customer requirements deemed by MSI to exceed the intended scope of this section 4.8 will be subject to additional fees at prevailing rates.
  - 4.9. EMR Interface maintenance and support. For Customers who have purchased an EMR Interface Use and Support License, MSI will provide the following post implementation services: (i) general issue Resolution; (ii) script Error Resolution; (iii) testing and validation of updates or upgrades; (iv) minor script changes comprising  $\leq$  10% of lines of source code; (v) workflow issues; and (vi) troubleshooting orders, results, or billing errors. Customer requirements exceeding the scope of this section 4.9 will be subject to additional fees at prevailing rates.
  - 4.10. Customizations available under this Agreement to all Licensees: (i) test protocols; (ii) changes to report headers; and (iii) new report builds that utilize existing report modules or subcomponents (tables, graphs, etc.).
  - 4.11. Customizations available under this Agreement to Enterprise License Customers (also available as a supplemental entitlement to all licensees for an additional fee): (i) impression scripts; (ii) predicted sets; (iii) fully customized PFT reports including new report builds that may not utilize existing report modules or subcomponents; and (iv) administrative reports.

## 5. Incident Submission and Processing

- 5.1. Live Interactive Technical Support. You may submit Incidents via phone at 978-521-4440. Live telephone and email support is available during MSI's Normal Business Hours of 8:00AM to 5:00PM Eastern Time, Monday through Friday, excluding Company Holidays.
- 5.2. Email. You may submit Incidents via email to: [support@morgansci.com](mailto:support@morgansci.com). The Support email inbox is actively monitored during Normal Business Hours. In addition, the email inbox is monitored for critical issues (Impact Code 1 or 2) during Extended

Business Hours of 6:00AM to 6:00PM Eastern Time, Monday through Friday, excluding Company Holidays. To ensure processing, email communication of critical issues during Extended Hours shall be marked with an email subject line of "CRITICAL ISSUE: [ERROR SUMMARY]."

- 5.3. Initial Response. Upon receipt of an Incident, a Product Specialist will review the information You provide with the objective to provide an answer on MSI's initial response. MSI's goal is to respond in the time frames mentioned below in section 6.1. This will be based on the impact code and product. Sometimes MSI does not have all of the information to provide an answer, or MSI may need to perform more research before providing an answer. In these scenarios MSI's initial response will be to let You know MSI has reviewed the information and what MSI's next steps will be.
- 5.4. Triage. MSI Software is primarily used with PFT Hardware, which often, but not always, is MSI Hardware. Incidents can vary widely in scope and area of the MSI Product(s) impacted. Examples include issues with EMR Interfaces, databases, software application(s), clinical questions, hardware calibration, or hardware service issues. As part of the Initial Response process, Product Specialists assist with triage. This may include a hand-off to a colleague whose subject matter expertise matches more closely with Your suspected issue or error.
- 5.5. Escalation. If the Product Specialist who initially took your issue requires assistance from someone, he/she will either consult with a colleague or escalate your issue to a more skilled team member, e.g., senior technical support engineer, developer, etc. The timeframe of these escalation goals is driven by the severity of the issue and its impact.
- 5.6. Account Management. If You feel You are not receiving the appropriate response for an issue, please check to make sure MSI understands the urgency of the situation properly. You can also contact your Sales Representative or Account Manager who will ensure the appropriate manager is aware of your situation.
- 5.7. The Product Specialist will make every reasonable attempt to understand your issue and help with a Resolution. This may involve requests for You to provide additional information (access to applications, environments, systems, etc.) so that the Product Specialist can reproduce the issue and convey the situation to those that can help address it (product owners, developers, QA, etc.). If MSI is unable to reproduce the situation, then MSI sometimes will not be able to provide a Resolution.

## 6. Response Times

- 6.1. MSI will respond based on impact for each reported Incident within the following response time and Resolution targets:

Impact Code	Impact Description	Response Target	Resolution Target
1	System unavailable or severely compromised; no workaround available; highest business impact.	Normal Business Hours: Within 30 minutes.  Extended Business Hours: Within two (2) hours.	MSI will work continuously on the issue until there is a Resolution. A staged approach may be used wherein the initial Resolution is a workaround or other

			mitigation, followed by a permanent Resolution.
2	System operating with limited capability or potential compromise; high-moderate business impact.	Normal Business Hours: Within 90 minutes.  Extended Business Hours: Within two (2) hours.	MSI will work with Users in a staged approach wherein the initial Resolution is workaround or other mitigation, followed by a permanent Resolution.
3	System operating within published capability; non-critical features may be limited; moderate business impact.	Normal Business Hours: Within four (4) hours.	MSI will work with Users to define workarounds and then provide a permanent Resolution.
4	System operating within published capability; low business impact.	Normal Business Hours: Within six (6) hours.	MSI will include a workaround, or a Resolution in the next maintenance release or minor release.
5	Enhancement requests; very low impact to production system or impact only to test system; little or no business impact.	Normal Business Hours: Within five (5) days.	MSI will work during normal business hours and within the planned Software release cycle to provide a Resolution. Enhancement requests are at MSI's discretion and are not obligatory.

6.2. If MSI believes that the Resolution time for any particular support call or error correction will not be sufficient, MSI shall contact You as soon as possible to detail the issue and provide an explanation for why the Resolution time cannot be met. In the event that You, acting reasonably, in its sole discretion, accept MSI's explanation, the parties shall agree on a new response time for that specific support call or error correction.

## 7. Software Maintenance

7.1. If You have active Use and Support Licenses, then You may download, install, and use any Updates and included Upgrades of the MSI software products for which You have purchased Licenses. If You have not purchased Use and Support Licenses or Your Use and Support Licenses have expired, You are not entitled to download, install, or use Updates or Upgrades and are not entitled to Support.

7.2. MSI Software consists of major and minor versions and patches. The following software versioning conventions are used:

7.2.1. Legacy Software: ComPAS: Major.Minor.Patch, for example "1.10.2804"

7.2.2. Latest Software: ComPAS2: Year.Major.Minor, for example "2019.1.0"

7.3. Upgrades, MSI Legacy Software. Active Licensees of ComPAS Software ("Legacy Software") are eligible for an upgrade to the ComPAS2 Software platform. Eligibility to upgrade is contingent upon acceptance of the latest version of the MSI EULA and

- the maintenance of a current Subscription License. While upgrades are included, the entitlements, terms and conditions of this Agreement shall govern the included Support services and any services not included herein will be offered for additional fees at prevailing rates.
- 7.4. Updates, Eligibility. Licensees are eligible for Updates, including bug fixes, minor enhancements, corrections, patches, and functions added to or removed from the Software. All use of Software Updates by User is governed by the terms and conditions applicable to the MSI software previously licensed by User and/or the license provided with such Software Updates.
  - 7.5. With the exception of section 7.3, Licensees are not entitled to Upgrades. MSI, in its sole discretion, may designate future Upgrades as a new Product and elect to separately License such Software.
  - 7.6. Software Maintenance benefits will cease upon expiration of the applicable Subscription License but may be reinstated as per the terms and conditions of the EULA.
  - 7.7. Error Corrections. MSI shall utilize commercially reasonable effort to correct any recurring code Error in the Software that is directly attributable to MSI. MSI shall have no obligation to correct all Errors and shall not be liable for correction of Errors attributable to any Third Party. Customer, upon discovery of any such Error shall notify MSI in writing and provide instructions to illustrate or reproduce the Error. Any Error that is corrected or resolved in any available version or release shall relieve MSI of any obligation to fix such Error.
  - 7.8. Upgrade and Update Implementation. The terms and conditions of this Agreement shall govern the roles and responsibilities of the MSI and the Customer in the implementation of Upgrades and Updates.

## **8. Customer Responsibilities**

- 8.1. Clinical End User Qualifications. MSI Software and Hardware is for use by prescription only and under the supervision of a healthcare provider. You are responsible for ensuring that Your End Users are suitably qualified, trained, and competent in the relevant pulmonary function testing principles and the operation of MSI systems. MSI personnel shall not serve as Your de facto end user operators at any time. Further, MSI shall cease the provision of Support services and notify you in writing should it conclude that Your end users are not operating MSI systems in safe and ethical manner, consistent with industry standards, state or federal regulations, or in accordance the product Documentation. In the case of cessation of services, You shall endeavor to reach a mutually agreeable corrective action plan in order for MSI Support services to be reinstated.
- 8.2. Clinical End User Contacts. You will provide clinical End User contacts to MSI as reasonably required to provide information, work through instructions, and confirm Resolution of the Incident. Your registered End User will be responsible for interfacing with MSI Product Specialists. Each contact must be familiar with the Software, its end use, and be capable of performing basic administrative functions.
- 8.3. IT/IS Technical Contacts. You will provide technical IT/IS contacts to MSI as reasonably required to provide information, work through instructions, and confirm

Resolution of the Incident. Your registered technical contacts will be responsible for interfacing with MSI Product Specialists. For certain Incident types, and since our Software is installed on your Devices, the collaboration of Your IT/IS contacts is a contingency for reaching a Resolution.

- 8.4. Biomedical or Clinical Engineering Resources. You may elect to provide MSI access to Your biomedical or clinical engineering resources so as to expedite remote or phone-based troubleshooting of MSI Hardware.
- 8.5. Customer Cooperation. Generally, You shall provide MSI with all necessary cooperation, information and support that may reasonably be required by MSI for the performance of the Support Services, including:
  - 8.5.1. Providing MSI with all necessary authorizations for secure remote access by MSI to your Devices and Software Environment. Remote access, including screen sharing is critical for the provision of timely, high quality Support services to the end user. Reasonable, good faith efforts shall be made by Customer to ensure some means of mutually agreeable remote access is maintained.
  - 8.5.2. Maintaining personnel with adequate expertise and training to assist MSI Product Specialists in providing troubleshooting and problem Resolution.
  - 8.5.3. Reasonably cooperating with MSI Support personnel in the diagnosis of a problem.
  - 8.5.4. Maintaining an unmodified copy of all Software Updates and all related documentation, archival files and configuration files necessary to reinstall, reconfigure or reconstruct any lost, altered, or damaged software
  - 8.5.5. Securely maintaining back-up copies of Your Software database file(s) so as to allow for data restoration or migration.
  - 8.5.6. Providing Incident details such as detailed description of the problem including Product and serial number (if hardware based), troubleshooting already performed and System log files.
  - 8.5.7. Ensuring that all products are used and maintained in accordance with the applicable product documentation.
  - 8.5.8. Providing MSI with the location (physical address including contact name, contact phone number, address, city, state, postal code and country) by serial number of all supported MSI Products.
  - 8.5.9. Notifying MSI in writing or via electronic communication of physical moves of equipment to a new location at least ten (10) business days in advance of the move.
  - 8.5.10. Registering in accordance with MSI's instructions, all service, product and site information for all products to be supported.
  - 8.5.11. Notifying MSI of any Customer required approval processes and/or Customer contacts authorized to request changes.
  - 8.5.12. Notifying MSI in writing or via electronic communication of upgrades to or migrations of PC workstations, servers, or anywhere that the Software or its databases reside at least twenty-one (21) business days in advance of the upgrade.

- 8.6. Data Security. Customers, within their roles and responsibilities as health care delivery organizations, are advised to ensure appropriate safeguards are put in place to address cybersecurity threats, such as those documented in authoritative industry standards; and/or any other cybersecurity Risk Management Framework that they deem appropriate to meet their obligations as stewards of patient data. As such, Customers take sole responsibility for endpoint, perimeter, and data transit security measures on their own Devices and infrastructure.
- 8.7. Data Backup. Customers are responsible for backing up and safeguarding all test data. MSI is not responsible for backing up, maintaining, safeguarding, or restoring data backups.
- 8.8. Software Environment. All Devices, servers, and networks must meet minimum specifications as supplied by MSI in the Documentation. Otherwise, overall system performance cannot be guaranteed. Enterprise License Customers shall maintain suitable test, production, and/or staging environments to accommodate Software and EMR Interface testing and validation activities.

## 9. Exclusions and Limitations

- 9.1. Eligibility. MSI is only obligated to provide services hereunder with regard to Supported Products that are in good general operating condition and, for software, for products that are at the then-current or immediately preceding version level.
- 9.2. Remote Support Only. MSI is only obligated to provide services hereunder remotely and MSI is under no obligation to provide on-site services under this Agreement.
- 9.3. After Hours Support. As a courtesy, MSI may agree to provide You Support services outside of its normal business hours ("after hours"). MSI shall consider the provision of after-hours services on a per request basis and only when provided a minimum of three (3) weeks advance notice. MSI reserves the right to charge You after hours fees at prevailing rates.
- 9.4. Ineligibility Circumstances. MSI shall be under no obligation to furnish Support for any Software to the extent that such Support is necessary or desired as a result of:
  - 9.4.1. The operation of the Software in environmental conditions or configurations outside those described in the Documentation.
  - 9.4.2. Your failure to maintain the Software in accordance with the standards described in the Documentation or as specified in any Support You receive from MSI.
  - 9.4.3. Actions of any third party other than MSI or a third party authorized by MSI.
  - 9.4.4. Causes unrelated to the Software as delivered to You by MSI, including without limitation, unauthorized modifications to the Software, made by You or on Your behalf.
  - 9.4.5. The combination of MSI products with any third-party hardware or software (other than software approved by MSI), or the interference of any such software with MSI Software in the Software Environment.
  - 9.4.6. Failure to notify MSI of the product defect during the term of this Agreement.

## 10. Training

- 10.1. For the avoidance of doubt, Support services under this Agreement do not entitle You to Training. Initial Product training is provided as part of the Professional

Services at the time of implementation. After initial training, additional training, if needed, whether remotely or onsite will be subject to additional fees at prevailing rates.

- 10.2. Online Training. MSI maintains a comprehensive online, self-paced training environment. The learning platform includes short, easy-to-consume training modules, a convenient approach to training on product updates and all activity is tracked as lessons and courses are completed. Repeat lessons and courses as many times as You like until access expires. For more information regarding online training offerings, visit: <https://www.morgansci.com/support/training/>.
- 10.3. Additional Services. This Agreement is designed to assist You with Errors and Incidents in the normal usage of the Products in Your environment. If You would like assistance beyond the scope of this Support Agreement, including interactive product training, implementation services, quality audits, quality improvement, consultation, or customization services, MSI Support recommends that You engage with Your Sales or Account Representative regarding Professional Services. MSI Professional Services have the skills to architect, implement, and optimize MSI solutions and are specially trained to provide a unified, consistent, and cost-effective user-oriented experience. Find out more by contacting [sales@morgansci.com](mailto:sales@morgansci.com).

## 11. General Terms and Conditions

- 1.1. Modifications. We may modify the terms and conditions of this Agreement (including MSI policies) from time to time, with notice given to You by email, through the Software or through our website. Generally, this will be done annually. Together with notice, we will specify the effective date of the modifications. Our services and business are constantly evolving, and we may make modifications, including during your then-current Support Term in order to respond to changes in our products, our business, or Laws. In this case, unless required by Laws, we agree not to make modifications that, considered as a whole, would substantially diminish our obligations during your then-current Term. Modifications will take effect automatically as of the effective date specified in the updated Agreement or policies.
- 11.1. Software License. User's rights to use Software Updates is governed by the terms and conditions applicable to the MSI software previously licensed by User.
- 11.2. Lapsed Support. If Customer fails to renew the Use and Support License for any reason prior to the expiration of the then current term, the parties may elect to reinstate such Support and Maintenance services pursuant to the terms and conditions set forth herein provided (i) that Customer agrees to pay for the time that has lapsed in addition to any renewal term and (ii) Products are in proper working condition as determined by MSI in its sole discretion.
- 11.3. Warranty. MSI warrants that services hereunder will be performed in a professional and workmanlike manner with a reasonable standard of care in accordance with general industry standards. Except for the preceding warranty, to the maximum extent permitted by applicable law, MSI and its suppliers disclaim all other warranties, express or implied, including, but not limited to, warranties of merchantability, satisfactory quality, non-infringement, or fitness for a particular purpose with regard to the Maintenance and Support services.

11.4. Confidentiality. All information provided by one party to the other in connection with services provided hereunder that is proprietary or confidential in nature and so marked by the disclosing party, or which the receiving party reasonably should understand is proprietary and confidential under the circumstances ("Confidential Information"), shall be treated by the receiving party as confidential, and the receiving party shall not disclose it to parties outside MSI or User or use it except as necessary in connection with performance under this Agreement. "Confidential Information" includes, without limitation, diagnostics, software and all related information and documentation, new product information, financial data, and technical data. The obligation to treat information confidentially shall not apply to information which (a) was already known to the other party prior to its disclosure by a party hereto, or (b) was publicly available at the time of its disclosure, or subsequently becomes so without violation by either party or its obligations hereunder; or (c) is rightfully received by a party from a third party without obligation of confidentiality to the other party; or (d) is independently developed by the party in receipt of such information. In the event that either party is requested or required by a court, government agency or legal process to disclose any Confidential Information of the other, such party agrees to provide prompt written notice to the other party so that the other party may seek a protective order or, in its discretion, waive compliance with the provisions of this Agreement. Each party shall provide its employees, agents, and advisors with access to Confidential Information of the other party only on a "need to know" basis in connection with the parties' business relationship. Each party shall take appropriate actions (by instruction, agreement or otherwise) with those employees, agents or advisors who are permitted access to Confidential Information of the other party to assure their compliance with the terms and conditions hereof. The parties agree that Confidential Information is valuable information, the unauthorized disclosure or use of which would cause irreparable injury for which there would be no adequate remedy at law, and that the disclosing party shall have the right to seek injunctive relief in the event of any such breach or threatened breach, in addition to any other remedy available to it.

11.5. Limitations of Liability:

11.5.1. In no event will either party or their respective suppliers be liable for any special, indirect, incidental, consequential or cover damages (including any damages resulting from inaccurate or lost data or loss of use or profits) arising out of or in connection with the furnishing of services hereunder or the use or performance of MSI Products. Except for violation of section 11.4 above, in no event will either party's total liability for any damages in any action based on or arising out of or in connection with the services performed hereunder or this Agreement exceed the total amount paid for the Maintenance and Support services for the Supported Product in connection with which the liability arose. The foregoing limitations shall not affect a party's rights and remedies under applicable intellectual property laws.

- 11.5.2. In the case that the Customer requests the use of customized predicted set(s), computer impressions, clinical alerts, or other customized scripts, the Customer must independently verify the functionality and accuracy of the requested scripts to be used. In no event will MSI be liable for any special, indirect, incidental, consequential or cover damages (including any damages resulting from inaccurate or lost data or loss of use or profits) arising out of or in connection with the implementation of Customer-supplied scripts.
- 11.6. Export. User agrees not to export, directly or indirectly, any MSI product or related technical data or information without first obtaining any required export licenses or other governmental approvals. Without limiting the foregoing, User, on behalf of itself and its subsidiaries and affiliates agrees that it will not export, re-export, transfer, or divert any software, or technical data, or any direct product thereof, to any country to which such exports or re-exports are restricted or embargoed under United States export control laws and regulations, or to any national or resident of such restricted or embargoed countries without first obtaining all export licenses and approvals required by the United States government.
- 11.7. General. The relationship of MSI and User is that of independent contractors. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the provisions shall remain in full force and effect. MSI and User agree to comply with the provisions of all applicable laws, ordinances, regulations, and codes. This Agreement (along with MSI's applicable terms and conditions accompanying the product and MSI's EULA) constitute the complete and exclusive understanding of the parties, and supersede all prior discussions, representations, and agreements regarding the subject matter hereof. In the event of a conflict or variance between any purchase order and this Agreement, this Agreement shall prevail. No amendment, modification or waiver of this Agreement will be effective unless approved in writing by the duly authorized representatives of the parties. Neither party is liable for its failure or delay to perform its obligations under this Agreement due to strikes, wars, revolutions, acts of terrorism, fires, floods, explosions, earthquakes, labor shortages, government regulations, or other causes beyond its reasonable control. This Agreement may not be assigned by User without prior written permission from MSI. Any attempt by User to assign any right or delegate any duty or obligation which arises under this Agreement without such permission will be voidable. This Agreement is governed by the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws principles. All notices required or provided for herein will be in writing and given by personal delivery, by overnight courier service, via facsimile or by mail using the address as set forth in the relevant Customer Order Form, and for MSI, its principal address as published or to such other address as may be substituted by notice to the other party. All notices will be effective upon receipt.