

SERVICE CONTRACT TERMS AND CONDITIONS

Parties:

These Service Contract Terms and Conditions are a legally binding contract ("Contract") between customer ("Customer") and CRAIC Technologies, Inc. ("CRAIC").

Coverage Period:

The effective term of this Contract begins and ends on the dates specified on the certificate mailed to Customer.

Payment Terms:

This Contract must be paid for in full on or before the start date. If payment is not received on or before the start date, Customer agrees that, CRAIC shall have the right to cancel this Contract, which shall be void and unenforceable from the start date. A current valid purchase order does not guarantee to Customer any rights set forth in this Contract.

Service Contract:

As part of this Contract CRAIC will provide ongoing email and phone support, Monday through Friday 9 AM – 5 PM PST, to Customer for the CRAIC instrument described in Customer's purchase order. If a service request cannot be resolved by email or phone support, at CRAIC's option, a CRAIC engineer or authorized representative will make a scheduled service call to the Customer's facility. The CRAIC engineer or authorized representative will use all commercially reasonable efforts to repair Customer's instrument. A service call does not guarantee that a non-operational instrument will become operational. If the CRAIC engineer or authorized representative determines that an instrument may be repaired at the CRAIC facility, at CRAIC's option, the instrument shall be sent properly packaged to CRAIC's facility at Customer's sole expense. CRAIC will assume no liability for damage to the instrument in transit whether or not properly packaged. CRAIC will return ship the instrument to Customer's facility of origin at no cost. If the CRAIC engineer or authorized representative determines that the instrument is un-repairable, CRAIC reserves the right to prorate the remainder of the Contract term minus the cost of the service calls, technical support, and all other related services provided. CRAIC does not guarantee that any instrument or parts are repairable or are available.

Obtaining Service Under Your Contract:

To obtain service, Customer must complete CRAIC's Instrument History form. CRAIC's Instrument History forms are available by emailing support@microspectra.com. CRAIC's Instrument History forms must be submitted to CRAIC's Technical Support Department by email at support@microspectra.com or by fax at (310) 573-8182. Customer must identify a Customer contact person(s) in CRAIC's Instrument History form who is familiar with the instrument along with that person's contact information. Once the CRAIC's Instrument History form is submitted, a service request ticket will be initiated by CRAIC and a CRAIC engineer or authorized representative will be assigned to the service request.

Preventative Maintenance:

With Gold and Platinum service contracts CRAIC offers one scheduled preventative maintenance ("PM") visit per year. During a PM visit, a CRAIC engineer or authorized representative will check routine functions of the instrument, review instrument performance, and provide a service report to Customer. During a PM visit, the CRAIC engineer or authorized representative will not repair or fix any reported or un-reported problems.

NIST Wavelength and Photometric Standards:

Customer is entitled to receive one free NIST filter re-certification from CRAIC during the term of this Contract. If Customer's NIST filters are damaged or do not comply with NIST standards, CRAIC is not and will not be responsible for the replacement, certification or re-certification of Customer's NIST filters. NIST filters shall be sent to CRAIC at the Customer's sole expense. CRAIC will assume no liability for damage to NIST filters in transit whether or not properly packaged. Once certified, CRAIC will return ship the NIST filter to Customer's facility of origin at no cost. All re-certifications must be reserved in advance. Customer can make an appointment by emailing support@microspectra.com. Shipping instructions will be given at that time.

Transfer Of Ownership:

If a change of ownership of the instrument occurs, Customer agrees to notify CRAIC immediately. If Customer fails to immediately notify CRAIC of a change of instrument ownership, CRAIC may, in its sole and absolute discretion, terminate this Contract. This Contract cannot be transferred to a different instrument.

Legacy Software:

CRAIC does not own, use, or possess non-CRAIC software. Solely as permitted by applicable law, CRAIC will provide service for software related issues if Customer provides CRAIC evidence that Customer owns and maintains all necessary licenses and that such licenses are valid and in force. CRAIC cannot and will not upgrade or make enhancements to legacy instruments' software. If Customer provides CRAIC evidence that Customer owns and maintains all necessary licenses and that such licenses are valid and in force, CRAIC will use all commercially reasonable efforts to maintain the instrument's functionality. If Customer cannot provide evidence to CRAIC that necessary licenses are valid or are in force, please contact CRAIC for instructions.

Parts:

Due to the aging of some instruments, some parts have become obsolete and may not be available. If CRAIC determines that a part is irreplaceable, CRAIC shall have no obligation to make the instrument operational. Obsolete parts include but are not limited to certain microscope and related parts, monitors, computer and related parts, spectrophotometers, power supplies, cables, software, and other equipment. CRAIC will use all commercially reasonable efforts to repair non-working parts or make suggestions for solutions. CRAIC is not responsible for the purchase, installation, or performance of suggested solutions.

Pre-Existing Defect:

If CRAIC finds that the Customer's instrument has a pre-existing defect prior to this Contract's start date, CRAIC reserves the right to terminate this Contract and shall have no obligation or liability to Customer for termination.

Special Exclusions:

This Contract does not cover damage due to external causes, including but not limited to: accident, abuse, misuse, natural causes, natural disasters, war, civil disturbances, acts of god, problems with electrical power, usage not in accordance with written product instructions, failure to perform required preventive maintenance, problems caused by use of software not provided by CRAIC, or parts and components not supplied by CRAIC. This Contract does not cover consumable items, such as but not limited to: quartz slides, quartz coverslips, software, bulbs, filters, lamps or any non-CRAIC added components.

Non-Operational Instruments:

If at any time CRAIC determines an instrument is non-operational, CRAIC is not responsible for prior, pending or future loss of business or data; related actions; or downtime.

Disclaimer of Warranties:

TO THE FULLEST EXTENT PERMITTED BY LAW, CRAIC DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS) AS TO THE INSTRUMENT AND CRAIC'S SERVICES AND ALL EQUIPMENT, INFORMATION AND PRODUCTS PROVIDED BY CRAIC.

Liability Disclaimer:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL CRAIC OR ITS AFFILIATES BE LIABLE TO CUSTOMER (OR ANY THIRD PARTY MAKING CLAIMS THROUGH CUSTOMER) FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOSS OF USE, PROFITS, DATA OR OTHER INTANGIBLES, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR RELATED TO THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE OR NON-PERFORMANCE OF THE INSTRUMENT OR THE SERVICES,

EVEN IF CRAIC HAS BEEN ADVISED PREVIOUSLY OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW OR OTHERWISE.

Miscellaneous:

This Contract is the entire agreement between Customer and CRAIC with respect to the subject matter hereof. This Contract supersedes any and all prior or contemporaneous agreements between Customer and CRAIC with respect to the subject matter hereof. If any part of this Contract is determined to be invalid or unenforceable, it will not impact any other provision of this Contract, all of which will remain in full force and effect. This Contract is governed by, and will be interpreted in accordance with, the laws of the State of California, without regard to any choice of law provisions. Customer agrees that, with the exception of injunctive relief sought by CRAIC for any violation of CRAIC's proprietary or other rights, any and all disputes relating to this Contract or Customer's use of the instrument shall be resolved by arbitration in accordance with the then-current rules of the American Arbitration Association (the "AAA") before an independent arbitrator designated by the AAA. The location of arbitration shall be Los Angeles, California, USA. The prevailing party in any such arbitration shall be entitled to the award of attorneys' fees from the non-prevailing party.

Questions:

Questions regarding this contract can be directed to a CRAIC Representative by phone at (310) 573-8180, or by email at support@microspectra.com. Written correspondence can be mailed to:

CRAIC Technologies
Attn: Technical Support Department
948 N. Amelia Avenue
San Dimas, CA 91773
U.S.A

*The terms of this contract are subject to change without notice.