

Purchase and Installation, Repair and Maintenance and Training Agreement

Date: 18 January 2010

Parties:

1. **Analysed Images Limited** (a company registered in England and Wales with number 06524430) whose registered address is 129 New London Road, Chelmsford, Essex, CM2 0QT ("AI"); and
2. **the 'Customer'**, as defined in Schedule 1 to this agreement

each a 'Party' and together the 'Parties'.

Operative Provisions:

1. Interpretation

1.1. In this agreement, unless the context otherwise requires:

'Critical Examination'	means an examination of the Equipment undertaken by a radiation protection advisor in accordance with the provisions of regulation 31(2) of the Ionising Radiations Regulations 1999;
'Equipment'	means the equipment specified in Schedule 1 together with any software and firmware updates relating to the operation and maintenance of the Equipment provided by AI from time to time;
'Force Majeure'	means, in relation to either party, any circumstances beyond the reasonable control of that party (including), without limitation, any strike, lock-out or other industrial action);
'Fully Comprehensive Maintenance Service' IRR99	means the Mandatory Service inclusive of full emergency call out, parts and labour as set out in clause 3.3; Means the Ionising Radiations Regulations 1999 (Statutory Instrument 1999 No. 3232), introduced to regulate health and safety relating to the manufacture, installation, use, and disposal of equipment producing ionising radiation.
'Liability'	means any liability arising by reason of any representation (unless fraudulent), or any breach of any implied term or any duty at common law, or under any statute, or under any express term of this agreement;
'Location'	means the location of the Equipment shown in Schedule 2, or any other location agreed from time to time in Writing between the Parties;
'Loss'	means, in relation to the Customer, losses (but not including loss of profits), damages, reasonable costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed (with the Prior agreement of AI) to be paid by the Customer in settlement of any claim, which is occasioned directly by AI's negligence or that of its agents or otherwise;
'Mandatory Service'	means the minimum required two inspections each contract year as set out in clause 3.2;
'Normal Working Hours'	means the hours of 8:30 a.m. to 5:00 p.m. (inclusive) on any Working Day;
'Warranty Period'	means the period referred to in Schedule 3, which shall commence on the date of the Critical Examination of the Equipment;
'WEEE'	means Waste Electrical and Electronic Equipment as defined in the Waste Electrical and Electronic Equipment (WEEE) Directive (2002/96/EC)
'WEEE Directive'	means The Waste Electrical and Electronic Equipment (WEEE) Directive (2002/96/EC), introduced to promote the collection and environmentally sound disposal of WEEE
'Working Day'	means any day other than Saturday or Sunday or a Bank or Public Holiday;
'Writing'	and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2. The headings in this agreement are for convenience only and shall not affect its interpretation.

2. Purchase and Installation

- 2.1. This paragraph 2 shall apply only in cases where AI and the Customer are contracting to buy and sell X-ray equipment.
- 2.2. AI shall sell and the Customer shall buy the Equipment subject to the provisions of the Sale of Goods Act 1979 (as amended) and as amended by the provisions of this agreement.
- 2.3. The Equipment shall be delivered to the Location on or before, and shall be installed and Critically Examined by AI at the Location, on the Installation Date (as set out in Schedule 1) during Normal Working Hours. Neither the date of Delivery nor the date of the installation and Critical Examination shall be of the essence of this agreement.
- 2.4. Title to the Equipment shall pass to the Customer upon receipt of full payment for the Equipment by AI. Risk of damage to or loss of the Equipment shall pass to the Customer following its delivery to the Location.
- 2.5. A Fully Comprehensive Maintenance Service, as set out in clause 3.3, shall be provided by AI for the Warranty Period. This shall be included within the price of the Equipment. Without prejudice to the Customer's rights in respect of the Equipment, the Customer agrees to exercise its rights under the Fully Comprehensive Maintenance Service before rejecting the Equipment or otherwise making any claim in respect of it.

3. Repair and Maintenance

- 3.1. During the period of this agreement AI shall provide the Customer with:
- 3.1.1. the repair and maintenance service identified in Schedule 1 in relation to the Equipment; and
 - 3.1.2. a training service relating to the proper use, where contracted between the Parties and noted in Schedule 3, testing and maintenance of the Equipment pursuant to regulation 31(2)(b) of the Ionising Radiations Regulations 1999
- 3.2. Mandatory Service
- The Mandatory Service shall consist of routine maintenance and inspection of the Equipment at regular intervals or at such other intervals as AI may reasonably determine to be necessary in order to keep the Equipment in good working order and to comply with the provisions of the Ionising Radiations Regulations 1999 (as amended or superseded from time to time).
- 3.2.1. Routine maintenance of the Equipment shall be carried out by one of AI's suitably qualified and duly authorised representatives attending at the Location at such times during Normal Working Hours as may be agreed in advance between the Parties from time to time.
 - 3.2.2. If AI's representative discovers a defect in or malfunction of the Equipment in the course of routine maintenance or if the Customer reports a defect in the malfunction of the Equipment, AI's representative or the Customer (as the case may be) shall ensure that the Equipment is prevented from being used. The Customer may request and AI may agree to provide the services set out in clause 3.3 at AI's standard charges in accordance with the provisions of clause 6.3.
- 3.3. Fully Comprehensive Maintenance Service
- The Fully Comprehensive Maintenance Service shall consist of the Mandatory Service together with the repair of any defect in or malfunction of the Equipment which is discovered by AI's representatives during the course of routine maintenance or is reported to AI by the Customer from time to time.
- 3.3.1. Routine maintenance of the Equipment shall be carried out by one of AI's suitably qualified and duly authorised representatives attending at the Location at such times during Normal Working Hours as may be agreed in advance between the Parties from time to time.
 - 3.3.2. If AI's representative discovers a defect in or malfunction of the Equipment in the course of routine maintenance, AI's representative shall use all reasonable endeavours to repair at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), AI's representative will seek to make suitable arrangements with the Customer for:
 - 3.3.2.1. a further visit to be made to the Location during Normal Working Hours for the repair of the defect or malfunction; or
 - 3.3.2.2. if the Equipment is inoperative as a result of the defect or malfunction, its repair at the Location outside Normal Working Hours; or
 - 3.3.2.3. if it is not reasonably practicable for the defect or malfunction to be repaired otherwise, the removal of the Equipment (or, where practical, that part of the Equipment in question) for the purposes of repair; and
 - 3.3.2.4. AI may, but shall not be obliged to, provide suitable alternative equipment during any period during which the Equipment is inoperative.
 - 3.3.3. If the Customer reports a defect in or malfunction of the Equipment during Normal Working Hours, AI shall use its best endeavours:
 - 3.3.3.1. to provide telephone support to remotely address any malfunction of the Equipment, and if this fails;
 - 3.3.3.2. to ensure that one of AI's suitably qualified and duly authorised representatives attends at the Location, during Normal Working Hours, within the period of time specified in Schedule 3; AI's representative will use all reasonable endeavours to repair the defect or malfunction at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), AI's representative shall seek to make such arrangements with the Customer as are mentioned in Clause 3.3.2.
 - 3.3.4. For the purposes only of determining the period of time within which AI's representative makes an attendance pursuant to clause 3.3.3, any period between the end of Normal Working Hours on one Working Day and the beginning of Normal Working Hours on the next Working Day shall be disregarded.
 - 3.3.5. If the Customer reports a defect in or malfunction of the Equipment after Normal Working Hours on any day, then unless AI expressly agrees otherwise, the report shall be deemed to be made at the beginning of Normal Working Hours on the next Working Day, and clause 3.3.3 shall take effect accordingly.
 - 3.3.6. If the Equipment is damaged otherwise than by fair wear and tear AI reserves the right to charge the Customer for the supply and fitting of any spare parts or components required to rectify such damage.
- 3.4. All reports of defects in or malfunctions of the Equipment must be made by telephone or in Writing, as appropriate, by a representative of the Customer and otherwise in such a manner as AI may reasonably require from time to time.
- 3.5. All spare parts and replacement components supplied by AI shall become part of the Equipment and any parts and components removed from it shall become AI's property, unless otherwise agreed in Writing between the Parties.
- 3.6. AI shall ensure that its representatives comply with all safety and security regulations in force at the Customer's premises which are brought to the attention of such representatives.

3.7. Training Service

The Training Services, where contracted for, shall consist of:

- 3.7.1. the provision to the Customer of adequate information about the proper use, testing and maintenance of the Equipment in accordance with regulation 31(2)(b) of the Ionising Radiations Regulations 1999 at the time of the Equipment's Critical Examination;
- 3.7.2. the provision to the Customer, from time to time in Writing with such up to date and accurate information as to the application and use of the Equipment as may be available to AI and as AI may reasonably determine to be necessary or desirable to be provided;
- 3.7.3. the use of best endeavours by AI to respond promptly, during Normal Working Hours, by telephone or in Writing, as appropriate, to any request by the Customer for information concerning the safety, application or use of the Equipment.

4. **Services not Included**

- 4.1. The Fully Comprehensive Maintenance Service shall not apply to, and AI's standard charges as set out in clause 6.3 shall apply to any defect or malfunction in the Equipment which arises as a result of:
 - 4.1.1. electrical work and apparatus external to the Equipment;
 - 4.1.2. transportation or relocation of the Equipment not performed by or on behalf of AI;
 - 4.1.3. any error or omission relating to the operation of the Equipment;
 - 4.1.4. any modification, adjustment or repair to the Equipment made by a third party without AI's written consent;
 - 4.1.5. the subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls; or
 - 4.1.6. any other cause (except fair wear and tear) which is not due to AI's neglect or default.
- 4.2. If on investigation AI reasonably determines that any defect in or malfunction of the Equipment is the result of any of the matters referred to in clause 4.1, the Customer shall be liable for all costs incurred by the Contractor in making the investigation and determining its cause.
- 4.3. If, following expiry of the Warranty Period, any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through AI's fault AI reserves the right to terminate this agreement with immediate effect, by giving Written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case AI shall repay to the Customer a fair proportion of any charges for AI's services which have been paid in advance by the Customer.
- 4.4. Except as expressly provided in this agreement or as agreed between the parties in Writing, AI shall have no obligation to provide any services to the Customer outside Normal Working Hours.

5. **The Customer's Obligations**

- 5.1. The Customer shall:
 - 5.1.1. at all times keep the Equipment in any environmental conditions recommended by AI;
 - 5.1.2. not move the Equipment from the Location without obtaining AI's prior Written consent, nor move the Equipment without procuring that a Critical Examination is performed on the Equipment;
 - 5.1.3. use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued or advised in Writing by AI;
 - 5.1.4. not allow any person other than the Contractor's representatives to adjust, maintain, repair, replace or remove any part of the Equipment;
 - 5.1.5. use reasonable endeavours to use support materials and product diagnostics supplied with the Equipment together with any information available on AI's web-site and use any e-mail support from AI before exercising its rights under clause 3.3.3.
- 5.2. To enable AI to perform its obligations under this agreement the Customer shall:
 - 5.2.1. ensure that AI's representatives have full and free access to the Equipment and to any records of its use kept by the Customer; and
 - 5.2.2. provide AI with such information concerning the equipment, its application, use, location and environment as AI may reasonably request.
- 5.3. The Customer shall take such steps as may be necessary to ensure the safety of any of AI's representatives who visit any premises of the Customer.
- 5.4. The Customer acknowledges that the Equipment is covered by IRR99 and WEEE. The Customer is responsible for returning the WEEE to AI at their cost and AI will then dispose of the WEEE in accordance with the applicable legislation.
- 5.5. AI will also dispose of "historic" WEEE from the Customer on a one-for-one basis, provided the customer's "historic" WEEE is replaced with AI EEE.

6. Charges

- 6.1. In consideration of the supply of the Equipment and the provision of the services, the Customer shall pay AI the charges set out in Schedule 1. AI shall send an invoice in relation to the charges to the Invoicing Address. All charges and other sums payable by the Customer under this agreement are exclusive of any applicable value added tax, which shall be additionally payable by the Customer.
- 6.2. If the Customer requests AI's services without any reasonable justification, or requires AI to repair a defect in or malfunction of the Equipment which is not covered under this agreement, the Customer shall be liable to pay AI's standard charges from time to time in force for such services.
- 6.3. The Customer shall pay to AI the amount shown in any invoice within 1 calendar month of its receipt. If the Customer fails to pay on the due date any amount which is payable to AI pursuant to this agreement, then without limiting clauses 10.2 and 10.3, any amount undisputed, or unsuccessfully disputed, shall bear interest from the due date until payment is received by AI (both before and after judgment) at 2% per cent per annum over Barclays Base Rate from time to time.
- 6.4. AI reserves the right to increase the Service Cost (as set out in Schedule 1) with effect from each anniversary of this agreement by a percentage equivalent to the increase (if any) for the twelve months preceding that anniversary shown by the Index for Employment and Earnings for the electrical and optical equipment industry as published as Table 18.1 in the Monthly Digest of Statistics by the UK Office for National Statistics (or if not available a suitable alternative index).

7. Liability

- 7.1. Except in respect of death or personal injury resulting from negligence:
 - 7.1.1. AI shall have no Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of the Equipment, any goods or services or any delay in providing or failure to provide the Equipment, any goods or services pursuant to this agreement;
 - 7.1.2. AI's total Liability for any Loss of the Customer arising out of or in connection with the failure to supply the Equipment pursuant to this agreement shall not exceed 10% of the cost of that Equipment;
 - 7.1.3. AI's total Liability for any Loss of the Customer arising out of or in connection with any delay in providing the Equipment pursuant to this agreement shall not exceed 10% of the cost of that Equipment; and
 - 7.1.4. AI's total Liability for any Loss of the Customer arising out of or in connection with the provision of any services or any delay in providing or failure to provide the services pursuant to this agreement in respect of any one event or series of connected events shall not exceed the charges payable by the Customer for those services for that contractual year.
- 7.2. The Customer shall take all reasonable steps to mitigate any Loss.

8. Insurance

- 8.1. AI shall effect and maintain at its own cost product liability insurance in respect of the Sub-Contractor's liability for death or injury to any person, or loss or damage to any property, arising out of the performance of its obligations under this Agreement in an amount of not less than £2,000,000 (two million pounds) per annum.

9. Force Majeure

- 9.1. If either Party is affected by an event of Force Majeure it shall promptly notify the other Party of the nature and extent of the event.
- 9.2. Neither Party shall be deemed to be in breach of this agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this agreement, to the extent that the delay or non-performance is due to an event of Force Majeure of which it has notified the other Party, and the time for performance of that obligation shall be extended accordingly.

10. Duration and Termination

- 10.1. This agreement shall come into force on the date of its acceptance by AI, and subject to clauses 10.2 and 10.3 shall continue in force for the Initial Period set out in Schedule 3. On expiry of the Initial Period and subject always to the option of AI to carry out a full factory overhaul of the Equipment and the provisions of clause 4.3, this agreement shall roll over until such time as either Party notifies the other in writing of its intention to terminate this agreement by giving 3 month's notice in Writing.
- 10.2. AI shall be entitled to terminate this agreement:
 - 10.2.1. in the circumstances and to the extent referred to in clause 4.3;
 - 10.2.2. forthwith by giving Written notice to the Customer if any sum payable under this agreement is not paid on the due date and not disputed.
- 10.3. Either Party may terminate this agreement forthwith by giving Written notice to the other if:
 - 10.3.1. the other commits any continuing or material breach of any of the provisions of this agreement, and if a breach is capable of remedy, fails to remedy the breach within 30 days after receipt of a Written notice giving full particulars of the breach and requiring it to be remedied;
 - 10.3.2. an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other required to supply the Equipment or any component parts or to perform the services under this agreement;
 - 10.3.3. the other makes any composition or voluntary arrangement with its creditors or enters into administration, or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986);
 - 10.3.4. the other goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligation imposed on the other under this agreement; or
 - 10.3.5. the other ceases, or explicitly threatens to cease, to carry on business.
- 10.4. A waiver by either Party of a breach of this agreement shall not be considered as a waiver of a subsequent breach of the same or any other provision.
- 10.5. The rights to terminate this agreement given by this clause shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach. On termination of this agreement for any reason neither Party shall have any further obligation to the other under this agreement, except as set out in clause 11 below and in Clause 5 relating to WEEE in respect of rights which have accrued prior to termination.

11. Confidentiality

- 11.1. AI will not, without the prior Written consent of the Customer, advertise or publish the fact that AI has contracted to supply the services to the Customer.

12. Notices

- 12.1. A notice or other information required or authorised by this agreement to be given by either Party to the other may be given by hand or sent by first class pre-paid post, facsimile transmission or comparable means of communication, excluding electronic mail to the other Party at the address referred to in clause 12.4.
- 12.2. A notice or other information given by post under clause 12.1 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after it was posted; and proof that the notice was properly addressed and sent by first-class pre paid post, and that it has not been returned to the sender as undelivered shall be sufficient evidence that such notice or information has been duly given.

13. Miscellaneous Provisions

- 13.1. AI may perform any of the obligations undertaken by it and exercise any of the rights granted to it under this agreement through any other company which at the relevant time is its holding company (as defined by section 1159 of the Companies Act 2006, as amended) or the subsidiary of any such holding company, and any act or omission of any such company shall for the purposes of this agreement be deemed to be the act or omission of AI.
- 13.2. Subject to the Customer's consent (which shall not be unreasonably withheld) the Supplier may carry out its obligations under this agreement through any agents or sub-contractors appointed by it in its absolute discretion for such purpose.
- 13.3. Except as provided in clauses 13.1 and 13.2, this agreement is personal to the Parties, and neither of them may, without the Written consent of the other, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations under this agreement.
- 13.4. Nothing in this agreement shall create, or be deemed to create, a partnership between the Parties.
- 13.5. This agreement contains the entire agreement between the Parties with respect to its subject matter, supersedes all previous agreements and understandings between the Parties, and may not be modified except by an instrument in Writing signed by the duly authorised representatives of the Parties.
- 13.6. Each Party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this agreement, and accordingly all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in this agreement shall affect the liability of either Party for fraudulent misrepresentation.
- 13.7. If any provision of this agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, the other provisions of this agreement and the remainder of the affected provisions shall continue to be valid.
- 13.8. The Parties acknowledge that it is not their intention that any third party shall be entitled to enforce any term of this Agreement which may confer a benefit on that third party, whether any such entitlement would, but for this provision, arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.9. This agreement shall be governed by and construed in all respects in accordance with the laws of England, and the Parties agree to submit to the non-exclusive jurisdiction of the English courts.

Schedule 1

Customer

[] (a company registered in England and Wales with number [] whose registered address is situated at [] (the 'Customer')

Equipment

<u>Q'ty</u>	<u>Description</u>	<u>Model</u>	<u>Serial Number</u>	<u>Install Date</u>	<u>Level of Service</u>	<u>Purchase Price</u>	<u>Service Intervals</u>	<u>Service Cost p.a.</u>
1	Cabinet X-ray device	TR4			Fully Comprehensive	n/a	Six monthly	£
1	Conveyor X-ray device	TR8			Mandatory	n/a	Six monthly	£
					TOTAL (excl. VAT)	n/a		

Schedule 2

Equipment Location Address: []

Invoice Address (if different): []

Schedule 3

Initial Period: [6 months]

Warranty Period : n/a

Response Time: [next working day]

Training Services: n/a