

# JEOL CANADA, INC. STANDARD SERVICE AGREEMENT TERMS AND CONDITIONS

JEOL's normal business hours are 8:30AM to 5:00PM, Monday through Friday excluding JEOL's scheduled holidays.

- 1. COVERAGE/EXCLUSIONS** – The Main unit, accessories and components listed on the JEOL Service Agreement (**JSA**) are covered under these terms and exclusions below. The **JSA** specifically excludes coverage on a) components, accessories and parts damaged through abuse, misuse or accident by the Customer; b) components, accessories and parts modified by the Customer without JEOL's prior written approval; c) damage caused by Customer's modification; d) damage or failure caused by operator error; and e) contamination or damage caused by a sample or liquid/gas holder.
- 2. PREVENTIVE MAINTENANCE** – JEOL agrees to provide up to two preventive maintenance (PM) visits per year, said visit shall include work JEOL deems necessary to assure long-term performance and reliability. Malfunctioning systems will receive corrective service at this time. Replacement of components/parts are at JEOL's discretion.
- 3. EMERGENCY SERVICE** – Whenever the instrument becomes inoperable or does not perform to specifications due to a failure associated with the instrument, a factory certified JEOL engineer will make the appropriate repairs during JEOL's regularly scheduled business hours.
- 4. PARTS REPLACEMENT** – All defective, as determined by JEOL, items covered by the **JSA**, shall be replaced. The following items are **excluded**: filaments, movable and fixed apertures, scintillators, x-ray crystals, fluorescent screens, detectors, lead glass, camera film boxes, burnt CRTs, Wehnelt assemblies, consumables, specimen exchange tools, and specimen holders not listed on the **JSA**. Emitter exchange coverage is included on all FEG instruments. JEOL reserves the right to use refurbished and/or rebuilt parts at its sole discretion. Said parts are warranted under paragraph 7 below. All defective parts replaced by JEOL shall become the property of JEOL. It is the customer's sole responsibility to ensure that all parts returned to JEOL are shipped in compliance with all applicable laws.
- 5. AGREEMENT ELIGIBILITY** – An instrument is eligible for a **JSA** following either the expiration of a warranty or of a previous **JSA** with no lapse in coverage. Eligibility after a lapse in coverage requires an inspection and certification by a factory certified JEOL engineer.
- 6. DISCOUNTS** – JEOL offers discounts for multiple instrument and multiyear **JSAs**. Contact JEOL service for information and qualification.
- 7. WARRANTY** – Except for parts defined as exceptions in paragraph 4, all items covered by the **JSA**, are unconditionally warranted for the term of the **JSA**. If Customer elects not to renew or extend the terms of this agreement, a 30-Day Labor, 90-Day Parts Warranty, shall apply to repairs performed during the last 90 days of the term of this agreement.
- 8. LIMITATION OF LIABILITY** – JEOL is not obligated to perform repairs or provide services, the need for which arises out of abuse, misuse (accidental or otherwise), external causes, including but not limited to fire, flooding, explosions and acts of God. Damage to any equipment resulting from cooling water, supporting facilities, corrosive atmosphere, strikes, transportation delays, unavailability of replacement parts, delays by suppliers of services or materials, line voltage variations, and similar environmental problems are also excluded. UNDER NO CIRCUMSTANCES SHALL JEOL BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OF USE OF JEOL PRODUCTS, INCLUDING WITHOUT LIMITATION, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE LOSSES,

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DAMAGES OR EXPENSES OR LOST PROFITS OR SAVINGS EVEN IF JEOL HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE, OR EVEN IF JEOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR BOTH. WITH THE EXCEPTION OF LIABILITIES RESULTING FROM JEOL'S SOLE GROSS NEGLIGENCE, JEOL'S TOTAL LIABILITY HEREUNDER SHALL IN NO WAY EXCEED THE TOTAL PRICE OF THIS SERVICE AGREEMENT.

**9. CHILLER COVERAGE** –Chiller coverage excludes the “facility supplies to” or the “facility returns from” the chiller unit. Damage arising out of connecting hoses, water pressure, or other circumstances outside of JEOL Canada, Inc.'s direct action or control is excluded. JEOL recommends customer install safeguards to monitor and protect against leakage. The Customer agrees to indemnify, defend and hold harmless JEOL Canada, Inc. its officers, directors, employees, agents, licensors, suppliers and any third-party providers from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from any damages as described.

**10. CONFIDENTIAL DATA** – If Customer requires any personal and/or confidential data, including but not limited to, social security numbers, health/medical records or any data that JEOL Canada, Inc. has a legal duty to keep confidential, Customer represents, warrants and certifies that it will hold confidential data in the strictest of confidence and will not use or disclose said data except to the extent required by law or authorized by JEOL in writing. Said confidential data shall be safeguarded according to commercially reasonable standards and protected at the same level as Customers own confidential data.

**11. INSURANCE** – JEOL maintains insurance policies which have the following limitations; (a) Comprehensive general liability insurance with a limit of \$1,000,000 (one million) for each occurrence and \$2,000,000 (two million) in the aggregate. (b) Statutory Workers Compensation insurance. Copies of certificates are available upon request.

**12. TERMS/PAYMENT SCHEDULE** – Payment is due within 30 days from the start of the **JSA** or invoice. A 3% interest charge per month or the maximum permitted by province, whichever is less, will be assessed on late payments. JEOL offers payment plans at an additional fee. Semi-Annual in Advance at 3.5%, Quarterly in Advance at 5.25%, Monthly at 7%, Quarterly in Arrears at 8.75%, Semi-Annual in Arrears at 10.5%. JEOL reserves the right to withhold service if customer fails to make payment as due or if customer has been delinquent in the past.

**13. ACCEPTANCE** This is JEOL's offer to sell at the prices and under the terms and conditions stated herein. Any type of counteroffer, including any and all terms and conditions contained in said counteroffer and/or PO, are hereby expressly rejected. JEOL Canada, Inc. will only perform under the **JSA** based on JEOL's terms and conditions. The **JSA** specifically excludes any and all customer terms and conditions. Acceptance of JEOL's terms and conditions is demonstrated by signature, receipt of a valid purchase order, payment, or performance hereunder. IT IS EXPRESSLY AGREED THAT THESE TERMS WILL SUPERSEDE AND TAKE PRIORITY OVER ANY ADDITIONAL OR INCONSISTENT TERMS AND CONDITIONS IN ANY PAST, EXISTING OR FUTURE PURCHASE ORDER, CONFIRMATION, OR OTHER SIMILAR AGREEMENT WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED. THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE PARTIES.

**14. CANCELLATION AND ASSIGNMENT** – A **JSA** may be cancelled by either party by providing 30 days written notice. In the event of cancellation, JEOL will refund the prorated

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balance. WORK PERFORMED OR PARTS PROVIDED DURING THE 30-DAY NOTICE IS AT THE SOLE DISCRETION OF JEOL. JEOL Service Agreements are non-transferable.

**15. TAXES** – This Service Agreement is subject to all province taxes as defined by law. Taxes are not included in the **JSA**, but will be calculated based on coverage and invoiced to Customer.

**16. SEVERABILITY** - Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.

**17. SERVICE QUALITY GUARANTEE** - JEOL Canada, Inc. guarantees a minimum uptime of 90% for instruments covered at least 12 months and will provide a service credit of 75% of the daily rate for each day over 36 days (10%) that the instrument is down. An instrument will be deemed down when a manufacture defect or a failure occurs rendering the instrument inoperable and is verified by a certified JEOL engineer. Preventive maintenance and pre-scheduled repairs/modifications basis are excluded from downtime. A service credit can only be applied to a future service agreement.