

JEOL USA, INC. LIMITED LEGACY SERVICE AGREEMENT TERMS AND CONDITIONS (ANALYTICAL INSTRUMENTS-NMR)

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. The **JSA** specifically excludes coverage on a) components, accessories and parts damaged through abuse, misuse or accident by the Customer; b) all components, accessories and parts modified by the Customer without JEOL's prior written approval; c) damage caused by customer's modification; and d) damage or failure caused by operator error.
- 2. SERVICE** – JEOL agrees to provide up to one preventive maintenance (PM) visits per year, said visit shall include work JEOL deems necessary to assure long-term performance and reliability. If the instrument becomes inoperable or does not to 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. Total days of service provided are limited according to the **JSA**. Up to a maximum of three (3) units can be returned to the repair center for evaluation/repair per incident in lieu of requesting on-site service. JEOL reserves the right to require use of service days if necessary.
- 3. PARTS REPLACEMENT** – As determined by JEOL, all defective items covered by the **JSA**, shall be replaced if available. The following items are excluded: third party probes, air compressors/dryers or other ancillary air generation products, NMR vibration legs/vibration tables, glass, consumables, Computers, NMR probe inserts and NMR spinner rotors. 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 responsibility of the customer to insure that all parts returned to JEOL are shipped in compliance with all applicable federal, state and local laws.
- 4. 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.
- 5. DISCOUNT SCHEDULE** – JEOL may offer discounts for multiple instrument and multiyear **JSAs**. Contact JEOL service for information and qualification.
- 6. 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. Preceding may be limited by parts availability.
- 7. 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, DAMAGES OR EXPENSES OR LOST PROFITS OR SAVINGS EVEN IF JEOL HAS BEEN ADVISED

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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.

8. 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, USA, 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.

9. 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.

10. 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 state law, 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.

11. 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, USA, INC. will only perform under this service level agreement based on JEOL's terms and conditions. This Service agreement 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.

12. CANCELLATION AND ASSIGNMENT – The **JSA** may not be cancelled unless JEOL is unable to make timely repairs. The **JSA** is non-transferable.

13. QUENCH– One major quench is covered. Cryogen costs and damages resulting from a quench and NMR magnet hardware, and magnet damage are not covered under quench insurance.

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

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15. SEVERABILITY - Invalidation or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.