

# CITY CLERK ORIGINAL

C-9681  
02/04/2015

Kodak alaris

KODAK ALARIS INC.  
Document Imaging Products

## Standard Maintenance and Software Assurance Services Terms and Conditions

Kodak Alaris Inc. ("Alaris") and You, the ("Customer") enter into these Standard Maintenance and Software Assurance Service Terms and Conditions (the "Agreement") and agree that the terms and conditions of this Agreement will apply to the provision of services by Alaris for the products defined below located in the United States, Hawaii and Alaska (a ten percent (10%) premium applies in Alaska).

All components of a Product (as defined herein) that are mechanically, electronically, or remotely interconnected must be inspected, tested and adjusted as one operating unit to diagnose and correct malfunctions effectively. Products that incorporate Alaris Software must be covered by an Alaris Agreement and all interconnected components of that Product must also be covered by warranty or the same level of service that is provided under this Agreement.

The initial term of the Agreement between Customer and Alaris shall be for one year. Thereafter, the Agreement shall automatically renew at Alaris' then effective policies, support plans and current price schedule for successive twelve (12) month periods each, a Renewal Term. The additional terms and conditions set forth below plus the description of services and charges contained in the Alaris invoice and the provisions of the Agreement shall govern the relationship between the parties. Any additional or inconsistent terms and conditions included in the Customer's purchase orders shall be deemed null and void and of no effect.

**1 Products.** Products covered by this Agreement are commercial office equipment, non-make or model specific, used by customers in an office environment and software that is developed and/or distributed by Alaris ("Alaris software").

**2 Customer Responsibilities.** Customer will designate an authorized representative for the purpose of interacting with Alaris' service personnel. The Customer representative and the Customer must:

- a) provide initial problem-solving assistance to site users;
- b) coordinate all requests for assistance and act as liaison with Alaris service personnel;
- c) perform appropriate problem analysis and corrective actions by following troubleshooting instructions and remedial actions as prescribed by Alaris;
- d) maintain system and Product documentation and install software updates, maintenance upgrades and patches supplied by manufacturers;
- e) perform preventative maintenance and error recovery procedures as defined in the individual Products' users manual;
- f) supply consumable items or other components that are replaced due to normal wear and/or as specified in the relevant manufacturer's manual(s);
- g) provide service personnel with immediate access to the Products when service is requested;
- h) when necessary, supply and maintain a modem and communication software approved by Alaris which satisfies the respective manufacturer's Product specifications.
- i) keep the site environmental ranges within the specifications set forth by the manufacturer of the relevant Product;
- j) provide continuous and appropriate resource availability during problem resolution.

**FOR SOFTWARE ASSURANCE ONLY**

k) Have a telephone available in the work area and allow remote access to Alaris service.

Failure to meet these obligations may result, at Alaris' sole option, in the imposition of additional charges at prevailing Per-Call rates or immediate termination of this Agreement upon notice to Customer.

**2.1 Customer Software.** Prior to service commencing on computers with hard drives, Customer is responsible for creating a back-up copy of the file from the hard drive. Alaris is only responsible for formatting (if required) and transferring those files deemed necessary for formatting as more precisely outlined in the Alaris formatting procedures for specific Products. Customer is responsible for restoring data. Alaris shall not be held liable for any damages arising from or relating to the loss of data, any software or any other information contained on a computer or similar device, or contained in or stored on a Product

**2.2 Product Condition.** Customer warrants that the Product covered by this Agreement (a) is in proper operating condition, (b) is without any unauthorized modifications, (c) has all safety features in working condition, and (d) has been maintained in accordance with manufacturer's Product performance specifications. Alaris reserves the right to inspect the Product and site installation to confirm that Products meet those conditions. At Alaris' discretion, such inspection and any repairs necessary to bring the Product up to those conditions shall be treated as Per-Call Service. If at any time Customer fails to maintain the Product in proper operating condition as described above, Alaris may cancel this Agreement immediately upon written notice to Customer.

**3 How to Obtain Service.** For Product: Customer must call Alaris' Customer Support Center at 1-800-356-3253 and provide the Product's K-number or serial number, which number shall be located on the respective Product(s). For Alaris Software: Customer must call Alaris' Customer Support Center at 1-800-822-1414 and provide the serial number.

**4 Types of Service Available.**

**4.1 Telephone Support.** Alaris will provide toll-free telephone support between 8:00 a.m. and 5:00 p.m., Monday through Friday, Customer local time.

**4.2 On-Site Service. (Product only)** Alaris will provide on-site service between 8:00 a.m. and 5:00 p.m., Monday through Friday, Customer local time. On-Site Service includes

adjustments and/or replacement of parts required to maintain Products operating consistently within manufacturer's published specifications.

**4.3 Periodic Maintenance. (Product only)** Periodic Maintenance ("PM") services will consist of routine maintenance services required to keep the Products in proper operating condition. Additional scheduled PMs may be purchased to supplement coverage. *Note: PM services MAY NOT be included in the Standard Plan for a particular Product.*

**4.4 Extended Hours.** Depending upon local service capabilities, available extended hour plans include 5-, 6-, and 7-day, 8-, 16-, and 24-hour options at additional cost. Alaris will use commercially reasonable efforts to provide Service outside of Agreement Hours as shown below. Any such service performed will be billed at prevailing Alaris Per Call Overtime rates.

**4.5 Holidays.** Contract support will not be provided on National holidays (New Years, Memorial, Independence, Labor, Thanksgiving and Christmas Days). Support is available on a best efforts basis at prevailing Per-Call Holiday rates.

**4.6 Response Time** Alaris' objective is to provide service during Alaris' normal working hours, within the following time frames:

Distance from Alaris Service City	Within Agreement Hours
Zone 1 (0 to 50 Miles)	Per coverage purchased
Zone 2 (51 to 100)	Per coverage purchased
Zone 3 (Over 100 Miles)	Next Business Day
Over 200 miles	Contact Alaris
Alaska	Best Effort based on location and schedule

Alaris will use its best commercial efforts to meet its response time objectives, provided however Alaris is not liable for any failure to do so.

**4.7 Advanced Unit Replacement ("AUR") Support (if applicable).** If Alaris determines a Product is not operating consistently within manufacturer's specifications, Alaris will provide next day AUR subject to availability of courier service. The replacement Product will perform at the minimum specifications of the current Product, but may not be the exact make and model. When AUR support is necessary, Alaris will ship the replacement unit to Customer's location, transportation prepaid. Upon delivery of a replacement unit, Customer must place the malfunctioning unit in the shipping case, apply the enclosed labels and call the carrier for pickup within 5 business days after receiving the AUR. Alaris will pay the return transportation charges. If the Customer has not returned the malfunctioning unit within 10 business days, Customer will be invoiced the list price of the unit and becomes responsible for such charge.

**4.8 Depot Service (if applicable).** If Alaris determines the Product is not operating consistently within manufacturer's specifications, Alaris will instruct the Customer regarding shipment of the Product to Alaris for repair. Alaris will repair the Product and return the Product to Customer.

**4.9 Parts.** Items as referenced in the manufacturer's manual(s) required to maintain Products operating consistently within manufacturer's published specifications may not be included in this Agreement and will be invoiced separately. Parts or components replaced by Alaris will be either new or remanufactured to Alaris new product standards. Parts removed from the system and replaced at no charge become the property of Alaris. **NOTE:** If Alaris determines that Parts, service publications or technical support needed to maintain or repair Products are not available, Alaris will cancel the Agreement and issue a prorated credit for any remaining prepaid coverage.

**4.10 Consumables.** If Customer also purchases consumables from Alaris under this Agreement, Alaris will provide consumables in an amount equal only to a manufacturer-recommended one-year supply, without charge to the Customer. Customer must purchase all requirements for consumables beyond such one-year supply at the prices charged by Alaris. Any Agreement including consumables is a fixed term contract and may not be cancelled by Customer at any time prior to the end of the term, except in the case of a breach by Alaris.

## 5 Alaris Software Modifications and Upgrades.

5.1 Alaris will provide Maintenance Upgrades, Software Patches and telephone assistance of a technical nature on *Alaris software* only. Alaris may issue Maintenance Upgrades or Patches and/or provide for on-site services necessary to correct errors that significantly affect software performance in accordance with Alaris' Software Product operating specifications. Unless documentation states otherwise, support will be provided for the current and previous version release of the *Alaris software*. For *Alaris software*, Maintenance Upgrades and Patches are at no charge and include one copy of the user's manual and/or changes.

5.2 Alaris reserves the right to develop new features and functionality improvements, which will be offered to Customers as Version Releases under a separate price schedule. *Capture Pro software must not have a lapse in maintenance coverage in order to entitle the user to free Version Releases.*

5.3 All *Alaris software* is subject to the terms and conditions of the Alaris software License that was in effect at the time the Alaris software was licensed from Alaris. License Terms are applicable as long as the Alaris software is being used, even if maintenance services are no longer available.

6 **Property of Alaris.** Maintenance material, tools, documentation, diagnostics and test equipment provided by Alaris shall remain the exclusive property of Alaris.

7 **Limitations.** The Services outlined in these terms are Alaris' only obligation. Alaris will not be responsible for any indirect, incidental, consequential or special damages resulting from the sale, use or improper functioning or inability to use the Products and/or related software, regardless of the cause, nor will Alaris be responsible for damages of any nature that are not caused by Alaris or are caused by circumstances out of Alaris' control. Such damages for which Alaris will not be responsible include, but are not limited to, loss of revenue or profit, loss of data, downtime costs, loss of use of the Product, cost of any substitute Product, facilities or services. This limitation of liability will not apply to claims for injury to persons or damage to tangible property caused by the sole negligence or fault of Alaris or by persons under its direction or control.

8 This Agreement does not cover, and Alaris shall not be responsible for:

- a) operating system services (e.g., database maintenance/recovery, product integration or application support,
- b) system administration services (e.g., system restarts, error monitoring and reporting basic system matters, including restoring the database);
- c) network system administration (e.g., installation of new software packages, maintenance of user and group accounts, solving network problems, performing system maintenance functions, monitoring networks, installing application software, maintaining configurations
- d) consultation services;
- e) version release or software support to other than licensed Alaris software products;
- f) Product installation, set-up, configuration or other non-repair services;
- g) cable and installation of cable runs or any acquisition of permits
- h) Customer training;
- i) circumstances beyond Alaris' control (such as customer overriding, bypassing or defeating interlock switches on equipment or devices sold by Alaris or any other 3<sup>rd</sup> party);
- j) problems due to failure of Customer to conform to Alaris' site specifications provided in the manufacturer's documentation;
- k) time spent in locating Product not at the specified location or waiting for Product availability;
- l) relocation of Product or service associated with relocation;
- m) seasonal hibernation (de-installation) and reactivation (re-installation);
- n) service or parts associated with any unauthorized modifications, attachments or service;
- o) rebuilding or reconditioning of Product;
- p) misuse or abuse of Product; or
- q) failure to follow Alaris' operating instructions or instructions provided by the manufacturer.

Alaris may provide, at its sole discretion, service in these situations under the Per-Call terms and at prevailing Per-Call rates.

9 **Confidentiality of Customer Data.** Alaris does not wish to receive any confidential information of Customer in the course of providing maintenance services, and Customer is expected to take all reasonable precautions to avoid disclosing any of its confidential information or that of its customers, employees or clients ("Confidential Information") to Alaris and its employees or contractors. However, in the event that Alaris' employees or contractors become exposed to Confidential Information, Alaris will ensure that such information is protected against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as Customer uses to protect its own information of a like nature.

10 **Governing Law.** This Agreement will be governed by and construed in accordance

with the substantive laws of the State of New York as applied to agreements entered into between two residents of the State of New York, without regard to its conflict of laws principles.

11 **Use of Other Party's Name.** Except as necessary to perform their obligations under this Agreement, neither party may make any reference to the other party, its trademarks or trade names in advertising, public announcements, or promotional materials without express written permission from the other party.

12 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement remains in effect, the legality, validity and enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision the parties shall negotiate in good faith to add a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible.

13 **Waiver Of Default.** Any failure of either party at any time, or from time to time, to require or enforce the strict keeping and performance by either party of any of the terms and conditions of this Agreement shall not constitute a waiver by either party of a breach of any such terms or conditions in the future and shall not affect or impair such terms or conditions in any way, or the right of either party at any time to avail itself of such remedy as it may have for any such breach of any term or condition. No waiver of any right or remedy hereunder shall be effective unless expressly stated in writing by the waiving party.

14 **Independent Contractor.** Customer shall act as an independent contractor and nothing herein shall be construed to make Customer, or any of its employees, officers, directors or representatives, the agent employee or servant of Alaris.

15 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party. Any attempted assignment, whether by divestiture, operation of law, change of control, merger, or otherwise, in contravention of the above shall be null and void and of no force or effect. Alaris, however, may assign this Agreement without the Customer's consent to any third party which acquires all or substantially all of that portion of the business assets of Alaris to which this Agreement pertains whether by merger, reorganization, acquisition, sale or otherwise.

16 **Forum.** All actions arising out of or related to this Agreement must be filed in a court of competent jurisdiction in the State where the Services were delivered.

17 **Billing and Terms of Payment.** Commercial billings are in advance and prices will vary depending upon billing arrangements (annual, quarterly, etc.) and a premium may apply. Payment terms are net 30 days from date of invoice

18 **Termination.** a) Either party may terminate this Agreement upon ninety (90) days prior written notice except as set forth in Sections 2.2 and/or 4.10; b) Either party may terminate this Agreement immediately if the other party ceases to conduct its operations in the normal course of business, becomes insolvent, or files for or becomes the subject of a bankruptcy petition, or is placed in receivership. c) Alaris may terminate this Agreement immediately if Customer attempts to assign this Agreement without prior written consent from Alaris.

19 **Force Majeure.** With the exception of any payments due hereunder, neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of cause(s) beyond the control and without fault or negligence of the non-performing party. Such cause(s) may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics and unusually severe weather, material shortages, strikes or similar labor disruptions.

20 **Additional Terms.** These terms may be amended or supplemented only by the express agreement of the Parties, in writing and signed by each Party.

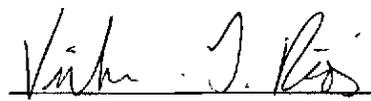
21 **Entire Agreement/Amendment.** This Agreement may be amended or supplemented only by the express agreement of the parties. This Agreement and the terms and conditions set forth in the original equipment warranty, which are incorporated herein, represents the entire agreement and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter of this Agreement. Furthermore, in the event of a conflict of terms between this Agreement and the original equipment warranty, this Agreement shall be the controlling document.

## Addendum

The following terms and conditions are incorporated into and an enforceable part of the contract between Kodak Alaris, Inc. ("Contractor") and the City of Glendale:

- A. The Parties agree to strike the 2<sup>nd</sup> sentence of the third introductory paragraph on page 1 of the Standard Maintenance and Software Assurance Services Terms and Conditions. The paragraph now reads "The initial term of the Agreement between Customer and Alaris shall be for one year. The additional terms and conditions set forth below plus the description of services and charges contained in the Alaris invoice and provisions of the Agreement shall govern the relationship between the parties. Any additional or inconsistent terms and conditions included in the Customer's purchase orders shall be deemed null and void and of no effect.
- B. The Parties agree to amend the final, unnumbered provision of paragraph 2 as follows: "Failure to meet these obligations may result, as agreed by the Parties, in additional charges at prevailing Per-Call rates or immediate termination of this Agreement upon notice to the Customer."
- C. The Parties agree to amend Paragraph 5.2 by inserting a new sentence at the end of the current text, stating "Nothing in this Agreement requires the Customer to purchase these Alaris Version Releases."
- D. The Parties agree to amend the final, unnumbered provision of paragraph 8 as follows: "Alaris may provide, if the Customer agrees, service in these situations under the Per-Call terms and at prevailing Per-Call rates."
- E. The Parties further agree that the compensation paid to Contractor pursuant to the Agreement shall not exceed \$16,148.00, unless agreed to in writing.
- F. This Agreement may only be amended or modified by a written agreement signed by both parties.
- G. Contractor warrants that it either has been approved as a foreign corporation authorized to transact business in the State Arizona in accordance with in ARIZ. REV. STAT. § 10-1053 or is exempt from such requirement as provided in ARIZ. REV. STAT. § 10-1051.
- H. Cancellation. This Agreement may be for a conflict of interest pursuant to ARIZ. REV. STAT. § 38-511.
- I. E-verify. If applicable, Contractor agrees to comply with ARIZ. REV. STAT. § 23-214 and agrees to comply with the requirements of ARIZ. REV. STAT § 41-4401.

  
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Kodak Alaris, Inc.

  
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City of Glendale

ATTEST:  
  
\_\_\_\_\_  
City Clerk

Approved as to form

  
\_\_\_\_\_  
City Attorney