

AB SCIEX SERVICE AGREEMENT TERMS AND CONDITIONS

1. These Service Agreement Terms and Conditions shall govern all orders for and purchases from AB Sciex LP ("AB") of services and parts under an AB Service Plan and other services relating to instruments and other equipment, including the maintenance, repair, installation, relocation or servicing of instruments and other equipment and including instrument training; and sets forth the agreement between AB and its customer regarding the performance of such services, unless other terms are specifically designated by AB to apply to a specific service (See Section 20 below).
2. Services are provided during normal working hours (Monday through Friday, 8:00 AM to 5:00 PM, excluding holidays). Telephone support hours are 5:00 AM to 5:00 PM Pacific Standard Time, excluding holidays. Planned Maintenance ("PM") will be performed in accordance with AB's PM procedures and checklist for the instrument or component being serviced. Training services will be conducted by AB in accordance with the course agenda indicated in AB's Quotation. Except as indicated in AB's quotation, training will be conducted at an AB location and customer will bear the travel, accommodation and other expenses of customer's employees. AB may require instrument recertification on a time and materials basis as a condition to performing services if an instrument has not been under warranty or a service plan immediately prior to the time of service.
3. The decision to repair or replace any parts of the instrument will be made by AB on the basis of which approach will provide the customer with the best service. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of AB.
4. AB will use reasonable efforts under the circumstances to provide services as quickly as possible. The service will be scheduled at a time mutually agreed upon by AB and the customer.
5. AB warrants that it will provide its services at least in accordance with generally accepted standards prevailing in the instrument repair industry, or instrument training industry with respect to training services, at the time and place performed. Warranty claims must be made within ninety (90) days after services are performed. **AB MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. AB'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT AB OPTION. THESE ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**
6. Service Plans do not cover replacement of parts, costs, repairs or adjustments for defects resulting from or necessitated by acts of nature, damage not caused by AB, accident, neglect, carelessness, misuse, including without limitation: operation with incompatible solvents or samples in the system; operation outside of the environmental or use specifications or not in conformance with the instructions for the instrument system, software, or accessories; improper or inadequate maintenance by the user; installation of software or interfacing, or use in combination with software or products, not supplied or authorized by AB; or modification, repair, service transfer to another location of the instrument made by the customer, customer's employees, agents or an unauthorized contractor, or intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations. Service Plans also do not cover repair or replacement of parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances.
7. Service Plans do not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications). Service Plans also do not cover replacement of parts, costs, repairs or adjustments due to Year 2000 noncompliance.
8. Payment terms are net 30 days from date of AB's invoice to customer. If payment is not received by the due date, AB may assess and customer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency and/or attorney to collect unpaid amounts, AB may invoice customer for, and customer will pay, all costs of collection, including without limitation reasonable attorneys fees.
9. AB may accept or reject at its discretion a purchase order for Service or a Service Plan. Unless otherwise expressly stated by AB in writing or under the terms of the purchased Service Plan, the initial term of a Service Plan and this Agreement is one year, commencing on the date designated by AB in its quotation or otherwise specified to customer. A Service Plan may be terminated by either party upon at least thirty (30) days written notice to the other party. Termination will be effective thirty (30) days after the receipt of such notice, or at a later date if one is so specified in the notice ("Termination Date"). Termination cannot be made effective prior to thirty (30) days after notice is received, provided, however, that AB may terminate a Service Plan immediately in the event that the instrument covered by the Service Plan is transferred to another location. AB will cease Service under this Agreement and underlying Service Plan on the Termination Date unless the customer specifies a separate, earlier date in writing ("Cessation Date"). In that event, AB will cease Service under this Agreement and underlying Service Plan on such Cessation Date.
10. In the event of termination of a Service Plan under Section 9, if the termination is by customer, AB shall calculate at its sole discretion the total price of services actually performed and expenses actually and reasonably incurred in servicing the

covered equipment under the underlying Service Plan from its effective date until the Termination Date. Customer's total payment obligation to AB under this Agreement shall equal (1) the amount so calculated or (2) the prorated price of the underlying Service Plan from its effective date until the Termination Date, whichever is greater, plus fifteen percent (15%) of the total fee paid for the underlying Service Plan, not to exceed the total amount paid. Any payments made by customer to AB in excess of this amount shall be credited to customer's account within thirty (30) days after the Termination Date toward future purchases of AB instruments, consumables or Service Plans. Any unpaid portion of this amount shall be immediately due upon customer's receipt of an invoice from AB. If the termination is by AB, other than for cause, AB will credit the customer with or refund to customer one hundred percent (100%) of the fee paid by customer for the underlying Service Plan, provided that if the underlying Service Plan is for a period of more than one year, AB will refund to customer the amount paid by the customer for all periods after the most recent anniversary date of the Service Plan. If a Service Plan is terminated early in connection with the trade in of a used AB instrument for a new AB instrument, the credit may be applied toward purchase of a Service Plan for the new instrument. Contact your AB service representative for details. No cash refunds will be made on account of the early termination of any Service Plan or other agreement for services.

11. AB will indemnify and hold customer harmless from and against any and all claims for injury or death of persons, or damage to tangible property, occurring while AB personnel are on customer's premises performing services under a Service Plan to the extent caused by the negligent acts or negligent omissions of AB, provided AB is given prompt notice of any such claim and the opportunity to control the defense and settlement of same.

12. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL AB BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES FAILURE TOPERFORM SERVICES OR OTHERWISE, EVEN IF AB IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL AB BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT OR PRODUCT ERROR OR THE FAILURE OF AN INSTRUMENT OR OTHER PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER AB'S INDEMNITY SET FORTH IN SECTION 11, AB'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS SERVICE AGREEMENT AND ANY UNDERLYING SERVICE PLAN, INCLUDING WITHOUT LIMITATION SERVICES RENDERED THEREUNDER, OR BREACH THEREOF OF FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO AB FOR THE UNDERLYING SERVICE PLAN.

13. Parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by any Service Plan, including, but not limited to seals, filters, gaskets, etc.

14. Use of any non-AB's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by AB to have caused instrument failure will require remedial repairs of the affected parts to be completed outside a Service Plan at AB's then prevailing rates for billable service.

15. Ancillary equipment not manufactured by AB, such as third party computers, may be excluded from any Service Plan, at AB's discretion. AB will pass on to customer any manufacturer's warranty of any such ancillary equipment, to the extent permitted by the manufacturer.

16. AB makes no representation whatsoever that services provided by AB satisfy or will satisfy any requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization. Customer agrees that it is customer's responsibility to ensure that such services are adequate to meet its regulation/certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization are the responsibility of customer.

17. Neither this Service Agreement nor any Service Plan is assignable or otherwise transferable by customer. Any assignment or transfer or attempt to assign or to transfer by customer shall be void.

18. AB may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable, safe and secure location reasonably determined by AB, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the service technician will not be exposed to any such materials. Customer shall not assign AB personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to AB and AB's written consent.

19. Service Plans do not include customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by AB in any particular case.

20. Neither party shall be liable for delays in performance or nonperformance in whole or in part, or for loss, injury, delay, expenses, damages or other casualty suffered or incurred on account of or due to, any causes that are beyond its reasonable control, such as, without limiting the generality of the foregoing, acts of God, fires, strikes, trade disputes, riots, embargos, earthquakes, storms, acts of the government, power losses or shortages, or inability to obtain parts or supplies, provided that the foregoing shall not apply to any obligation to pay money due.

21. These Service Agreement Terms and Conditions, together with AB's quotation regarding the Service Plan(s) or other services subject to these terms and conditions, and AB's description of the services provided under the Service Plan purchased by customer (collectively, "AB's Terms"), represents the entire agreement between the parties with respect to the subject matter herein and supersedes and entirely replaces (i) any previous agreements between the parties with respect to the subject matter herein and (ii) any pre-printed, standard or other terms (except for the statement of Services or Service Plan selected and, if accurate, price) set forth in customer's purchase order (if accepted by AB) or any other document not signed by an authorized representative of AB and agreed to by AB, which are hereby rejected and shall be void. Customer's submission of a purchase order or other instrument regarding the purchase of Services in response to AB's quotation or any other AB document that includes or incorporates these terms shall be deemed acceptance of these terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in such purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of customer is expressly conditioned on customer's assent to and acceptance of AB's Terms to the extent they are additional or different terms. Except as otherwise provided in these terms, in the event of an inconsistency between these terms and the terms appearing on AB's quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these terms, and all other provisions of these terms shall remain in full force and effect.

22. No amendment of these terms or modification thereof shall be binding unless it is in writing and signed by a duly authorized representative of both AB and customer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these terms for any other purpose. If any provision of these terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect. Nothing in this Agreement shall be deemed or construed as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise by AB, or to limit AB's rights to enforce its patent or other intellectual property rights. No additions or modifications to this Service Agreement shall be valid unless specifically agreed to in writing by both parties. This Service Agreement and any underlying Service Plan shall be governed by the laws of the Province of Ontario, exclusive of its conflict of laws rules.