

**Leica Microsystems Inc.**  
**2345 Waukegan Road**  
**Bannockburn, IL 60015**  
**1-800-248-0223**

**SERVICE CONTRACT  
TERMS AND CONDITIONS**

**A. TERM OF CONTRACT**

This contract commences on the Effective Date specified on the face hereof and in attachments continues in effect for one (1) year unless otherwise stated.

**B. MAINTENANCE AGREEMENT**

Leica agrees to provide the availability of maintenance service for Leica equipment during normal workdays, Monday through Friday, excluding Leica observed holidays with planned maintenance inspections and on-call service performed from 8:00 A.M. to 5:00 P.M. Standard Maintenance services provided include: Planned maintenance inspections, as referenced on the face hereof, specified by Leica to be performed at mutually agreed upon times. The inspection may be forfeited at Leica's discretion if Leica service personnel are unable to gain access to the equipment at the agreed upon time. On-call remedial service as required due to equipment malfunctions within the hours and subject to the conditions specified herein. Parts replacement as required on an exchange or new part basis. Labor to install replacement parts is included. Consumables or supply items are not included. Replaced parts shall become the property of Leica.

**C. CUSTOMER RESPONSIBILITIES**

Permit only trained personnel to use the equipment and ensure that the equipment is used at all times in accordance with Leica's operating instructions. Promptly and regularly carry out all operator maintenance routines in accordance with the Leica operator manual. Constantly provide suitable environmental conditions for the equipment as recommended by Leica or as agreed at time of installation. During the period of the Agreement, permit only Leica personnel (or persons authorized by Leica) to adjust, repair or modify the equipment. Notify Leica immediately when the equipment needs maintenance or is not operating correctly, providing full information and a description of the fault or problem. Comply with any additional specific instructions Leica may give. Prior to any service visit by Leica personnel, Customer shall ensure that any auxiliary equipment not manufactured or supplied by Leica which is affixed to or positioned near the equipment is removed or adequately protected. In the event of the failure of Customer to remove or protect such auxiliary equipment, Leica shall not be responsible for any accidental damage thereto. Remove, or implement other safeguards to protect, all programming, programs, data and removable storage media before failing equipment is to be repaired. Provide full, free and safe access to the equipment during the period of maintenance, and if of a preventive nature, shall be at a time pre-arranged and mutually agreed upon. Provide adequate working space and facilities including heat, light, ventilation, and electrical supplies for use by Leica personnel. Provide reasonable access to and use of the telephone and data communication facilities and equipment. Provide access to and use of all documents supplied by Leica with the equipment and any other data or documents which in the opinion of Leica's representative, relate to maintenance information, subject to Customer's confidential disclosure statement. Not alter, add to or move the equipment, repair or attempt repair without notification in advance to Leica. The only exception to this clause is operator maintenance as described in the Leica Operator Manual. Give Leica ninety (90) days written notice of intent to move the equipment. All costs associated with the moving of the equipment are the responsibility of Customer. Comply with the terms of the Occupational Safety and Health Act, the federal Hazardous Material Regulations and any other statutory regulations governing the use of the equipment. At the time of service visit, notify Leica's personnel of any hazardous or dangerous environments or orient, instruct and assist Leica's personnel to prevent exposure to same. Accompany Leica's engineer while entering or leaving Customer's premises and be present in the area where the equipment is located during the period of the maintenance work.

**D. EXCLUSIONS**

This agreement does not cover: Any accessory or consumable supply items; painting or refinishing the equipment or furnishing materials therefore; electrical work external to the equipment; installation, maintenance or removal of alterations or attachments to the equipment; any service which is impractical for Leica to render because of alterations in, or attachments to, the equipment; changes or alterations in specifications unless approved by Leica; moving, dismantling or reinstallation of the equipment; repair of equipment damage, replacement of maintenance parts (due to other than normal wear) or repetitive service calls caused by Customer's improper use of, or failure to use supplies. Waiting time or costs associated with repeat trips to Customer site as a result of failure by Customer to provide full, free and safe access to the equipment during a mutually agreed upon maintenance time or at the time for which Customer requested service. Repair of equipment damage, replacement of parts or increase in service time caused by - failure to continually provide a suitable environment as prescribed by Leica including adequate space, electrical power, air conditioning and humidity control; neglect; misuse, including use of the equipment for purposes other than for which designed; alterations, including any deviation from Leica's equipment design; attachments including any interconnection to the equipment of non-Leica equipment or devices not under a Leica maintenance agreement; other equipment or accessories except Leica equipment or accessories under warranty from Leica, or under a Leica maintenance agreement; model conversions, including upgrades and downgrades between models and equipment types or installation or removal of a Leica feature whenever any of these activities was performed by other than Leica, except that this will apply only during the first three-month period, subsequent to such equipment modification, that the equipment is under this Agreement; and/or unauthorized attempts by Customer or his representative to adjust, modify or repair the equipment; lack of or improper operator performed maintenance or cleaning in accordance with operator manuals or normal procedures; or any other cause beyond the reasonable control of Leica.

**E. SERVICES FOR ADDITIONAL CHARGE**

Additional services will be provided by Leica under this Agreement at Leica's then generally available hourly service rates and minimum charges for service time, including travel and waiting time, parts and material prices then generally in effect, and charges for travel and shipping expense, all as applicable.

#### **F. EXCUSABLE DELAYS**

Leica shall not be liable for delays in delivery or performance, or failure to deliver or perform due to causes beyond its reasonable control, including but not limited to acts of God, acts of Customer, acts of civil or military authority, Governmental priorities, fires, strikes or other labor disturbances, floods, epidemics, quarantine restrictions, war, riot, delays in transportation or inability due to causes beyond its reasonable control to obtain necessary labor, materials, components, services, manufacturing facilities or any other commercial impracticability. In the event of any such delays, the date of performance shall be extended for a period equal to the time lost by reason of delay. In the event of an equipment shortage, Leica shall have the right to allocate its available resources among its customers in such a manner as Leica shall consider equitable.

#### **G. CANCELLATION CLAUSE**

Service maintenance contracts are subject to cancellation upon 60 days written notice by either party. Cancellations during the contracts first year is subject to reimbursement for labor and material cost up to but not exceeding the remaining value of the contract.

#### **H. TAXES**

Leica's prices do not include sales, use, excise or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise, value added or other similar tax applicable to the manufacture, sale, price, delivery or use of the equipment or service furnished hereunder shall be paid by Customer, or in lieu thereof Customer shall provide Leica with a tax-exemption certificate acceptable to the taxing authorities.

#### **I. PAYMENT TERMS**

Charges for the service and all applicable taxes are due and payable upon receipt of invoice from Leica. In the event that any payment due there under shall become due as herein provided and shall remain unpaid for ten (10) days after Customer is notified by Leica of such delinquency, Leica may at its option (a) withhold service or (b) declare all sums due and to become due hereunder to be immediately due and payable. Any additional equipment agreed to by Leica will be added to the Agreement at their prevailing standard maintenance and installation charges.

#### **J. LIMITATIONS OF LIABILITY**

Leica's entire liability and Customer's exclusive remedy for damages from any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to actual damages up to the lesser of \$50,000 or an amount equal to 12 month' maintenance charges for the specific equipment under this Agreement that caused the damages or that are the subject matter of, or are directly related to, the cause of action. Such maintenance charges will be those in effect for the specific equipment when the cause of action arose. The foregoing limitation of liability will not apply to claims by Customer for personal injury or damage to real property or tangible personal property caused by Leica's negligence. In no event, whether as a result of breach of contract, warranty, tort (including negligence and strict liability) or otherwise, shall Leica be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the equipment or any associated equipment, damage to associated equipment, cost of capital, cost of substitute equipment, facilities, services, or replacement power, down time costs, or claims of Customer's customers for such damages. If Leica furnishes Customer with advice (such as applications advice) or other assistance which is not required pursuant to the Agreement, the furnishing of such advice or assistance will not subject Leica to any liability whether in contract, warranty, tort (including negligence and strict liability) or otherwise. THIS IS A SERVICE AGREEMENT. Except as provided under Section B, parts and services provided by Leica under this Agreement are provided AS IS, without any warranty, whether written, oral, express, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. In no event shall any service or parts be provided beyond the term of this Agreement. If any provision or provisions of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Leica reserves the right to use the services of third parties for partial or entire service job.

#### **K. MODIFICATIONS/IMPROVEMENTS**

Leica may at its discretion, with the consent of Customer, modify the equipment covered by this Agreement to improve performance or reliability. The Customer shall provide access to the equipment upon notification from Leica that a modification is to be carried out. Customer's requests for modification to the system or for any work whatsoever outside the terms and conditions of this Agreement shall be negotiated between Leica and Customer and Customer will be responsible for such cost.

#### **L. GENERAL**

Equipment not maintained by Leica immediately prior to the commencement of the Agreement must be brought up to a condition acceptable to Leica. Any charge for bringing the equipment to acceptable condition shall be paid by Customer at service rate then in effect. Leica services described herein may be rendered by the use of Leica selected OEM manufacturer service agents. This Agreement is not assignable by Customer without the prior written consent of Leica. Any attempt to assign any of the rights, duties or obligations of the Agreement without such consent is void. Maintenance service or services for additional charge do not assure that the operation of the equipment will be uninterrupted or error free, and Leica is not responsible for failure to fulfill its obligations under the Agreement due to causes beyond its control.

#### **M. ENTIRE AGREEMENT**

Customer acknowledges that he has read this Agreement, understands it, and agrees to be bound by its terms and conditions. The parties agree that this Agreement and its applicable supplements are the complete and exclusive statement of the Agreement between the parties, superseding all proposals or prior Agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. The Customer will be deemed to have assented to all terms and conditions contained herein if any part of the described equipment or services are accepted. Any additional or different terms or conditions proposed by Customer are objected to by Leica without need of further notice of objection. This Agreement shall not be effective or binding upon Leica until signed on its behalf by one of its executive officers, or a duly authorized Service Manager, and until Leica has granted credit approval to the Customer. No waiver, alteration or modification of any of the provisions hereof shall be binding upon Leica unless in writing and signed on its behalf by one of said representatives of Leica. The validity, performance, and all matters relating to the interpretation of effect of this Agreement and any amendment hereto shall be governed by the law of the State of Illinois.