

Leica Microsystems Inc. Service Terms and Conditions

1. Application

These Terms and Conditions for Service (“Terms”) together with the description of Services in the Quotation form the exclusive and comprehensive agreement between Leica and the Customer for the provision of Services (“Agreement”), which Agreement shall govern all Orders placed by the Customer with Leica Microsystems Inc., a Leica Microsystems subsidiary, or its affiliates (any of these entities hereinafter individually referred to as “Leica”). However, these Terms do not apply to goods or services provided by Leica Biosystems Division of Leica Microsystems Inc. or any Leica Biosystems affiliate. No other terms or conditions issued by Customer shall prevail over this Agreement unless agreed to in writing by Leica. Leica hereby objects to and rejects any such terms. Customer’s submission or acceptance of an Order, as well as its acceptance of Services requested in an Order, constitute its acceptance of these Terms.

All Orders, in any form whatsoever, are free of obligation and do not constitute an offer or acceptance thereof by Leica unless and until Leica acknowledges the Order. All of Leica's Quotations lapse after 30 days or the lesser period specified in the Quotation. An Order submitted by Customer is considered an irrevocable offer by the Customer. No Orders submitted by Customer will bind Leica until accepted by Leica in writing.

Leica reserves the right to change or modify these Terms at any time, at the most recent version hereof is available at:

<https://www.leica-microsystems.com/company/sales-service-terms-and-conditions/>

2. Definitions

As used herein and as applicable to all Orders placed under this Agreement:

“**Customer**” shall mean the Customer receiving the Services as identified in the Quotation.

“**Quotation**” shall mean the proposal for Services issued by Leica to Customer, which sets forth pricing, Service scope and applicable Contract Periods for each Instrument.

“**Contract Period**” shall mean the time period of performance of Services as set forth for each Instrument(s) in the Quotation.

“**Order**” shall mean any purchase order or other transactional document transmitted by Customer to Leica under which Customer may purchase Services for a Leica Instrument.

“**Services**” shall collectively mean any installation, technical assistance, remote diagnosis, preventative maintenance, remedial maintenance, part replacement, critical hardware upgrade, Software update (i.e., a patch or minor improvement to a version of Software already installed), qualification, calibration, compliance, relocation, application support or training services provided to Customer under this Agreement.

“**Instruments**” shall collectively mean hardware, systems, or other equipment provided and/or manufactured by Leica and all operating systems

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or other software which may be embedded therein.

“Software” means any and all Leica proprietary computer programs, operating software, firmware or other software applications which are either embedded into an Instrument or provided as an application licensed to Customer hereunder.

“Service Plan” refers to the complete service level offering performed during the Contract Period described for each Instrument(s) on the Quotation.

Preventative Maintenance services refer to the set number of scheduled standard maintenance inspections to be provided on an Instrument, with recommended intervals according to Leica Instruction Manual provided with or made available for each Instrument.

3. Standard of Service

Leica represents and warrants that the Services provided will be performed in a workmanlike and professional manner with reasonable skill, care and diligence, all in accordance with standard industry practices and in compliance with laws applicable at the location of Service performance. All Services shall be provided by an authorized Leica representative subject to the fees set forth under the applicable Quotation. Leica shall be entitled to engage authorized service providers to carry out the work. Conformity of Services as described hereinabove shall be warranted for a period of ninety (90) days or the balance of the Service Plan, whichever is longer. Customer’s sole remedy for breach of warranty shall be a re-performance of the Services. Leica does not warrant that the Services will render an Instrument to be error

free or that continued use and operation of the Instrument will be uninterrupted. The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, express, implied, or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

4. Scope of Services

Leica performs Services according to the Service Plan purchased by the Customer or, if not the case, on a time-and-material basis. Upon Customer’s written request, Leica may provide the following services not otherwise included in a specific Service Plan on a time-and-material basis, always subject to Leica’s acknowledgment of Customer’s request, and such services shall be subject to these Terms & Conditions, unless otherwise agreed to in writing, and Leica’s then-current and generally available time-and-materials rates and pricing for, among other things, labor, travel and waiting time, travel expenses, parts and materials, shipping and packaging: installation of additional Instruments, Instrument modifications and improvements, requested de-installation and re-installation of an Instrument, optional Instrument-specific services, non-critical hardware upgrades, Software upgrades (i.e., a replacement of an older version of Software), and other items as applicable.

If part of the Service Plan, Leica shall carry out Preventative Maintenance to test the main functions of the Instrument and ensure it performs in accordance with Leica Microsystem’s specifications. Each Preventative Maintenance must be requested directly by Customer and Leica will contact Customer within a one (1) month period, unless otherwise agreed

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in writing, to schedule such Service consistent with Leica's (or the manufacturer's if not Leica) recommended timeframe.

Leica agrees to provide the Services for Leica Instruments, during normal workdays, Monday through Friday, excluding Leica observed holidays, and during normal working hours of 8:00am to 5:00pm local time. Subject to the availability of personnel, after-hours service is available upon request at an additional charge. Customer acknowledges that the Instruments may not be available for use during scheduled maintenance and service visits and that Leica shall not be liable for such Instrument downtime. Leica, at its option, will perform Services at either the Customer's facility or the nearest Leica authorized service center or facility. While every effort will be made to render Services promptly, Leica does not make any guarantee regarding specific response times to a Service request, or Instrument uptime minimums, unless otherwise specified in the Quotation.

5. Replacement Parts

Leica, at its sole discretion, will determine if replacement parts are required and reserves the right to use refurbished material or parts for repairs of Instruments covered by a Service Plan or those for which Services are purchased on a time-and-material basis. Any refurbished material or parts used shall be subject to the same warranty period that apply to the Services, as described in Section 3. All parts Leica removes and replaces during Service shall become the property of Leica.

6. Service Plan Eligibility

Any Instruments that have not been maintained under a Leica warranty or previous Service

agreement with Leica or a Leica-authorized provider immediately prior to the date of this Agreement may be subject to inspection, certification, or up-front maintenance, at Customer's expense, to ensure that such Instruments meet Leica's standards for maintenance and support. Leica, at its sole discretion, shall determine Instrument eligibility for Service.

7. Exclusions

Service Plans do not cover replacement of parts, costs, repairs or adjustments for defects resulting from or necessitated by, in whole or in part, acts of nature, damage not caused by Leica, accident, neglect, carelessness, misuse, including without limitation:

- (a) Negligent storage or handling of the Instrument by Customer, its employees, agents, or contractors;
- (b) Failure of Customer to prepare or maintain the site, provide power requirements or operating environmental conditions in compliance with any applicable instructions or recommendations of Leica, including for Instruments or Software;
- (c) Adverse power conditions or environmental conditions such as erratic power, voltage spikes, RF or magnetic interference, HVAC failure or other causes beyond Leica's reasonable control;
- (d) Absence of any Instrument, component, or accessory recommended by Leica but omitted or removed at Customer's direction;
- (e) Any misuse, alteration, or damage to the Instrument by persons other than Leica,

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including through operation of the Instrument with incompatible solvents or samples;

(f) Combining Instruments with any product furnished by others, including use with or installation of software or interface(s) not supplied or authorized by Leica, or with incompatible Instruments or Software not authorized by Leica, where such combination causes failure or degradation of performance of the Instrument or Instruments;

(g) Improper maintenance of the Instrument, failure to maintain the Instrument and/or comply with any applicable instructions or user manuals provided by Leica;

(h) Modification, repair, service, transfer of the Instrument to another location by anyone other than Leica or transfer to another location without notifying Leica prior to such transfer, or intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with Instrument or software that detrimentally affects normal operations; or

(i) Any failure by Customer to fulfill its responsibilities pursuant to Section 9 below.

Specifically, without limitation, Service Plans do not cover:

(a) Repair or replacement of parts that are radioactive or contaminated with biological, toxic, or other dangerous materials or substances;

(b) Parts for any Instrument or other Instrument other than the covered Instrument or Instrument as identified in the Service Plan by its specific serial number(s);

(c) Consumables unless otherwise specified in the Quotation; or

(d) Unless otherwise agreed to in writing by the parties, parts in contact with any liquid, including, but not limited to plates, vials, tubes, filters, etc. which may at Leica's sole discretion, be considered wetted and thus Customer-replaceable.

Any parts or repairs required, at Leica's sole discretion, to adjust for or repair Instruments on account of any of the above exclusions shall be invoiced to the Customer outside of a Service Plan at Leica's then-prevailing rates for billable (time and materials) service. Leica reserves the right to terminate the Agreement at any time should any of the exclusions listed above apply. Unless otherwise specified in the Quotation, Service Plans do not include Customer training or services related to the relocation of Instrument. Ancillary instruments or accessories not manufactured by Leica, such as third-party computers, may be excluded from any Service Plan at Leica's direction.

8. Acceptance

Acceptance of the Services by Customer shall be deemed complete and final upon completion of Services on-site or after the repaired Instrument has been received by Customer upon a reasonable time-period for inspection by Customer, which period shall under no circumstances exceed five (5) business days. Customer may reject Instruments and/or Services only if they do not meet Leica's published specifications or are otherwise defective and Customer provides a detailed report to Leica within that period.

9. Customer Responsibilities

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During the Contract Period and/ or the Service Plan Period, whichever is longer, Customer shall:

- (a) Ensure that the Instrument is operated at all times by users who have received Instrument training in accordance with the applicable Leica User Manual;
- (b) Perform all recommended standard and routine operator maintenance required to be performed by Customer as set forth in the applicable Leica Instruction Manual provided with or made available for each Instrument.
- (c) Schedule annual Preventative Maintenance visits with Leica;
- (d) Notify Leica immediately through Leica's established methods of communication of any Instrument malfunction and provide a full description of the issue;
- (e) Provide Leica with notice of its intent to move an Instrument no fewer than sixty (60) days prior to doing so. Failure to provide such notice shall be grounds for termination by Leica for good cause. If applicable and Leica agrees to the change in its sole discretion, Customer shall be entitled to Preventative Maintenance at the new location;
- (f) If the Service Plan provides for remote Services, grant Leica remote access to provide remote support;
- (g) Maintain and update customary anti-virus and network safety measures for Instruments that are integrated into computer networks;
- (h) Provide appropriate support to Leica's service personnel.

10. On-site Service Requirements

Version: Dec. 13, 2021

Prior to Leica performing any Services, Customer shall use its best efforts to:

- (a) Provide Leica full and free access to the Instrument requiring Services at the time(s) scheduled. Services not completed because Customer would not provide access at a time reasonable to Leica will be forfeited;
- (b) Promptly notify Leica of any hazardous or dangerous environments and instruct and assist Leica in preventing exposure;
- (c) Ensure that any third-party auxiliary instrument which is affixed to or positioned near the Instrument is removed or adequately protected;
- (d) Implement safeguards to protect all programming, programs, data and other removable storage media. Leica shall not be responsible for any accidental damage in the event Customer fails to remove or protect such auxiliary Instrument;
- (e) Ensure an authorized Customer representative is available to sign any applicable documentation required by Leica upon completion of Services.

11. On-site Guaranteed Response Time

Unless Leica provides a Guaranteed Response Time to Customer in writing, the on-site response time will be on a reasonable effort basis. Requests by Customers with Service Plans will be prioritized over Customers' requests without a Service Plan.

For Services eligible for Guaranteed Response Times:

Service calls must be received by Leica's service center before 2:00 PM Central time. Calls

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received after this period will be considered received the next business day. Customer must also provide access to the Instruments within the Guaranteed Response Time.

On-site remedy for Time and Materials - If Leica fails to be on-site within the Guaranteed Response Time purchased on a time-and-materials basis (excluding Service Plans), except where Customer did not provide access to the Instrument, Leica shall not invoice Customer the premium amount related to the Guaranteed Response Time.

On-site remedy for Service Plans - If Leica fails to be on-site within the Guaranteed Response Time specified in the Customer's Service Plan, except where Customer did not provide access to the Instrument or breached the Agreement or when non-performance is the result of Force Majeure, Leica shall issue a credit to Customer for a delay of one (1) business day or more. The credit shall take the form of one of the following options, at Leica's sole discretion:

(a) Each late day will extend the Contract Period by the corresponding number of days.

An amount equal to 1/365th of the annual cost of the Service Plan related to the Instrument for which the service call was made for each late day. If a Service Plan covers more than one Instrument, the credit shall be determined by first allocating the annual cost of the Service Plan to the Instrument for which the service call was made. The Customer may apply the credit toward the cost of the renewal of its current Service Plan covering that Instrument for a consecutive period. To use the credit, Customer must notify Leica's Service Center in writing (e-mail notification is satisfactory) of its intention to

use the credit for a renewal no later than the date of expiration of the Service Plan period in which the credit was earned.

The procedure and credit described above are Leica's sole obligations and Customers' sole remedy for failure of Leica to respond within the Guaranteed Response Time when provided on a time-and-materials-basis or by the Service Plan, respectively. Leica's Service Center contact details can be found at <https://www.leica-microsystems.com/contact/contact-us-online/>.

12. Health and Safety

Leica may require a completed certificate of decontamination, or transfer of an Instrument to a suitable, safe and secure location reasonably determined by Leica, 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 Leica personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to Leica and Leica's written consent thereto.

13. Pricing

(a) **Fees** - All service fees, as set forth on the Quotation, shall remain firm for the duration of the Contract Period. Additional fees may be invoiced for Services required on a time-and-materials-basis when not otherwise included within the scope of a specific Service Plan. All pricing for any applicable extension of the Contract Period may be subject to change.

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(b) **Payment Terms** – Unless otherwise agreed to in writing, payment shall be due net thirty (30) days from the date of invoice. Past due balances are subject to a service charge of one and one-half percent (1.5%) or the highest rate allowed by law, whichever is lower. Customer shall notify Leica of any inconsistent and/or disputed amounts within thirty (30) days from date of invoice. Customer waives its right to dispute charges after this time. Payments are not subject to setoff or recoupment for any present or future claim Customer may have. If Customer fails to make any undisputed payment when due, Leica may immediately suspend provision of further goods and services without breaching this Agreement. Leica will also be entitled to reimbursement of any reasonable out-of-pocket expenses incurred in collecting payments owed under this Agreement, including without limitation attorneys' and collections fees. Leica may require payment in advance if in its opinion Customer's financial condition appears to call for such action.

(c) **Taxes** – All fees for Services are exclusive of any applicable sales tax, goods and services tax, value added tax, or any similar taxes or charges. Customer is responsible for all taxes, duties, fees and expenses imposed by federal, state or local governmental entities, applicable to the Services furnished hereunder or in lieu thereof, Customer shall provide Leica with a tax exemption certificate acceptable to and considered valid by the applicable taxing authorities.

14. Termination

Unless otherwise expressly stated in the Quotation, the Contract Period of a Service Plan and this Agreement is one (1) year, commencing

on the date indicated on the Quotation. Either party may terminate a Service Plan for convenience 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"). Leica may terminate a Service Plan immediately if the Instrument covered by the Service Plan is transferred to another location.

(a) **Termination by Customer** - Except when terminated in connection with the trade-in of a used Leica instrument as provided for in this section, if Customer terminates a Service Plan and/ or an Agreement, Leica shall be entitled for payment from Customer ("Termination Amount") in an amount equal to (1) the total price of Services actually performed and expenses reasonably incurred related to the Service Plan until the Termination Date, or (2) the prorated price of the Service Plan from its effective date until the Termination Date, whichever is greater, plus a mark-up of 20 % of the average of one year of the Service Plan ("Mark-up"). The parties agree that such Mark-up reasonably reflects the additional and sunk costs borne by Leica and caused by the early termination such as administrative costs and costs for resource reallocation (personnel and inventory).

The Termination Amount shall be due **within 30 days from the date of the invoice issued by Leica**. If Customer has made an advance payment for a portion of the total payment obligation due for the underlying Service Plan, any remaining unpaid portion of the Termination Amount shall be due **within 30 days from the date of the invoice issued by Leica**.

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Any payments made by Customer to Leica above the Termination Amount shall be credited to Customer's account within thirty (30) days after the Termination Date and applicable toward future purchases of Leica instruments, consumables or services plan. If a Service Plan is terminated in connection with the trade-in of a used Leica instrument for a new Leica instrument, the unused prorated dollar value of the Service Plan will automatically be applied as an extension of the post-warranty service on the new instrument.

(b) Termination by Leica – Leica may terminate the Service Plan and/ or the Agreement for cause if Customer breaches any of its material obligations under the Agreement, including those listed in Sections 9 and 12 and Customer fails to cure such breach within thirty (30) days' notice. In such case, Leica shall be free from any further obligation to Customer and Leica shall be entitled to payment from Customer equal to the Termination Amount described above. If Leica terminates the Service Plan for convenience, Leica shall refund or credit Customer, at Leica's sole discretion, for any advance payment by Customer for the unused portion of the Service Plan from Termination Date to the end of the Contract Period within thirty (30) days after the Termination Date. Any unpaid balances owed by Customer shall be immediately due upon Customer's receipt of an invoice from Leica.

15. Delivery and Transfer of Risks

Unless otherwise agreed in writing, Leica may choose the route and type of delivery for the return of the repaired Instrument. Customer shall bear all costs of transportation and packaging. Leica shall insure the Instrument at

Customer's expense against reasonable transportation risks. Customer shall notify Leica immediately in writing of any transport damage. Risk of loss or damage to the Instrument shall pass to Customer once Leica has provided it to the transporter, even if Leica has assumed responsibility for additional services such as loading, transport or unloading. If delivery is delayed as a result of circumstances within Customer's control, the risk passes to Customer on the day on which it is notified of Leica's readiness to deliver.

Orders for goods to be exported are subject to Customer's ability to obtain export licenses and other necessary papers within a reasonable period, at Customer's costs. Customer will furnish all Consular and Customs declarations and will accept and bear all responsibility for penalties resulting from errors or omissions therefrom. Delivery dates are approximate and not a binding term of this Agreement. Leica will not be liable for any damages or costs (including any consequential or incidental damages) resulting from delays in performance.

16. Indemnification

Customer shall indemnify, defend and hold Leica harmless from all claims, costs (including reasonable attorneys' fees), damages and liabilities ("Claims") arising from: (a) Customer's use or misuse of the Instrument; (b) any act or omission by Customer resulting in bodily injury or death of any person or any loss or damage to property; (c) Customers' fault, negligence, willful misconduct, omissions or breach of Customer's obligations under this Agreement. Leica shall indemnify, defend and hold Customer harmless from all Claims arising from any act or omission by Leica resulting in bodily injury or death of any

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person or any loss or damage to property arising directly from Leica's performance of the Services under this Agreement, except to the extent the same are caused by the negligent or willful acts or omissions of Customer or any breach by Customer of its obligations under this Agreement.

17. Limitation of Liability

EXCEPT AS OTHERWISE REQUIRED BY LAW, IN NO EVENT SHALL LEICA BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF ANY WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF LEICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT OF LIABILITY, LEICA'S MAXIMUM LIABILITY HEREUNDER SHALL NOT EXCEED THE LOWER OF (I) THE ANNUAL AGGREGATE AMOUNT OF FEES PAYABLE TO LEICA OR (II) AN AMOUNT EQUAL TO \$25,000. LEICA'S RIGHTS AND REMEDIES IN THESE TERMS ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RIGHTS OR REMEDIES LEICA MAY HAVE AT LAW OR IN EQUITY.

18. Remedies

Without limiting its remedies under existing law, Leica may, in the event of a material breach by Customer pursue any, without waiving its ability to do any other, none, or all of the following remedies: (a) suspend or cancel its performance hereunder, including any pending Services; (b) declare all unpaid balances, payments, and expenses due or to become due hereunder immediately due and owing; (c) terminate this

Agreement or Service Plan without additional liability or obligation to Customer; or (d) seek any other cumulative remedies at law or in equity. The foregoing remedies are cumulative, and may be exercised by Leica, in whole or in part, at Leica's sole discretion.

19. Compliance with Laws

Customer shall comply with the terms of the Occupational Safety and Health Act, the federal Hazardous Material Regulations and any other statutory regulations, including applicable privacy regulations, governing the use of the Instrument(s). Neither party to this Agreement shall engage in any activity prohibited by antikickback, anti-self-referral, or any other federal, state or local law or regulation which relate to health care and/or the performance of Services under this Agreement or any Service Plan, as those regulations now exist or as subsequently amended, renumbered or revised.

20. Governing Law; Venue

This Agreement is governed by and construed in accordance with the laws of the State of Illinois without regard to conflicts of laws provisions. The parties consent to the sole and exclusive venue and jurisdiction of the competent state or federal court in the Northern District of Illinois, at Leica's option. The United Nations Convention on the International Sale of Goods shall not apply.

21. Force Majeure

Except for Customer's payment obligations, neither party shall be liable for delays in performance, in whole or in part, or any loss, damage, cost or expense, resulting from causes beyond its reasonable control, such as acts of

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God, fire, strikes, epidemics, embargos, acts of government or other civil or military authority, war, riots, delays in transportation, difficulties in obtaining labor, materials, manufacturing facilities or transportation, or other similar causes (“Force Majeure Event”). In such event, the party delayed shall promptly give notice to the other party. The party affected by the delay may: (a) extend the time for performance for the duration of the Force Majeure Event, or (b) cancel any unperformed part of any Orders if such Force Majeure Event lasts longer than sixty (60) days. If a Force Majeure Event affects Leica’s ability to meet its obligations at the agreed upon pricing, or Leica’s costs are otherwise increased as a result of such Force Majeure Event, Leica may increase pricing upon written notice to Customer.

22. Notices

Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three (3) days after being sent via registered mail with return receipt requested, by courier, by first-class mail, postage prepaid. Copies may be sent via email (with evidence of receipt required) at the addresses specified on the applicable Quotation for the respective parties or at such other address as either party may from time to time designate to the other in writing.

23. Entire Agreement; Modifications; Waiver; Survival

This Agreement (incorporating any applicable Order or Quotation) represents the entire agreement between the parties, there being no other promises, terms, conditions, or obligations, referring to the subject matter not

contained or referred to herein. If any provision of this Agreement to any extent is declared invalid or unenforceable, the remainder of this Agreement will not be affected thereby and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. Leica’s failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder. The termination or expiration of this Agreement will not affect the survival and continuing validity of any provision which expressly or by implication is intended to continue in force after such termination or expiration.