

## Service Contract Terms and Limitations

Switzerland 30.04.2013

Illumina's Service Contracts are subject to the following terms, conditions, and limitations.

**1. Definitions. Interpretations.** “**Covered Hardware**” means those portions of the Hardware that are covered by a Service Contract purchased by Purchaser hereunder. “**Current Specifications**” means Seller's written specifications for the Covered Hardware that apply to such Covered Hardware as provided in the Service Contract that is purchased hereunder, but only if the purchased Service Contract provides that the Covered Hardware will conform to current specifications rather than the Original Specifications. “**Purchaser**” means the person or entity acquiring the Service Contract from Seller. “**Documentation**” means Seller's user manual, package insert, and similar documentation, for the Covered Hardware in effect on the date that such Covered Hardware shipped from Seller. Documentation may have contained additional terms and conditions that are hereby incorporated herein by reference. Documentation may have been provided (including by reference to a website) with the Covered Hardware at time of shipment or provided electronically from Seller. “**EULA**” means the end user license agreement for Software. “**Facility**” means the physical address where Covered Hardware is located. “**Hardware**” means Seller branded instruments, accessories, or peripherals. “**Original Specifications**” means Seller's written specifications for the Covered Hardware in effect on the date that such Covered Hardware shipped from Seller. “**Original Terms**” means the Seller terms and conditions of sale in effect on the date the Covered Hardware was shipped from Seller setting forth the terms and conditions of Purchaser's purchase and use of such Covered Hardware, components thereof, and Software. “**Quotation**” means a written quotation provided by Seller to Purchaser for the Service Contract. “**Seller**” means the entity selling the Service Contract hereunder. The Selling entity is identified on the quotation, order acknowledgment or similar communication, or Seller website if the order is being placed electronically at Seller's website. “**Specifications**” means the Current Specifications or the Original Specifications, as applicable; provided that, Specifications shall in all cases refer to the Original Specifications unless otherwise set forth in the Service Contract. “**Site**” means the smallest definable room that contains the Covered Hardware. “**Software**” means Seller branded software provided by Seller with the Covered Hardware. All Software is licensed and not sold and may be subject to additional terms found in the Software's end user license agreement. “**Term**” means the length of the term of the Service Contract.

Sections, titles and headings in these terms and conditions are for convenience only and are not intended to affect the meaning or interpretation hereof. Whenever required by the context, the singular term shall include the plural, the plural term shall include the singular, and the gender of any pronoun shall include all genders. As used in these terms and conditions except as the context may otherwise require, the words “include”, “includes”, “including”, “such as”, “e.g.” or “example(s)” are deemed to be followed by “without limitation”, whether or not they are in fact followed by such words or words of like import, and “will” and “shall” are used synonymously. Except as expressly stated, any reference to “days” shall be to calendar days, and “business day” shall mean all days other than Saturdays, Sundays or a bank holiday recognised in Switzerland.

**2. Term.** All Service Contracts are for a period of 12 months, unless otherwise agreed to in writing by Seller or as set forth in the relevant Quotation.

**3. Response Time and On-site Support.** Seller will use commercially reasonable efforts to respond to Purchaser's requests for service within the time period specified in the Service Contract. All requests for service must be made through Seller's customer support organization (“**Purchaser Solutions**”). Please refer to Seller's website for Purchaser Solutions contact information. Seller reserves the right to provide service and support by any method in its sole discretion, including but not limited to, remote instruction via telephone, Internet or email, mailing to Purchaser replacement parts or test equipment, exchanging Purchaser's component equipment with loaner equipment while repairs are being made, and deploying service or applications personnel for on-site services. Other than installation and preventative maintenance visits, Seller shall determine in its sole discretion whether and when any personnel or replacement parts or equipment are to be sent to Purchaser's site. Seller shall respond to Purchaser's request for support in accordance with the average response time specified in the Service Contract. Seller will provide a minimum number of on-site support visits as specified in the Service Contract if the Purchaser has identified a specific need that can be fulfilled by the visit and if the Purchaser has made reasonable accommodation for scheduling the visit. If no need is identified and the timing of any visit cannot be scheduled at a mutually-agreeable date and time, Seller may provide fewer visits than prescribed in the Service Contract.

**4. Software Support.** During the Term, Seller shall use commercially reasonable efforts to provide all Software updates and qualified Software upgrades in accordance with the terms of the Service Contract as such materials become commercially available for distribution. Purchaser's use of all Software, updates, and upgrades of Software shall be subject to this Agreement, the Original Terms, and the applicable EULA.

**5. Hardware Support.** During the Term, Seller shall use commercially reasonable efforts to install mandatory Hardware updates in accordance with the terms of the Service Contract as such materials become available for distribution. Whether a Hardware update is mandatory shall be determined by Seller in its sole discretion. Seller shall reschedule Hardware updates to coincide with preventive maintenance visits. If Purchaser requests that such Hardware updates occur at a time or date other than during preventive maintenance visits, Seller may, at its sole discretion, charge Purchaser for any costs and expenses incurred in connection with such Hardware update visit. All updated Hardware and components thereof and Purchaser's use of the same shall be subject to this Agreement and the Original Terms.

**6. Hardware Repairs.** Seller shall use commercially reasonable efforts to repair Covered Hardware reported by Purchaser and deemed inoperable by Seller's Purchaser Solutions personnel. Seller's sole obligation hereunder is to provide parts and labor according to the terms of the Service Contract and is limited to only repair or replacement of Seller branded parts originally provided by Seller to Purchaser. All repaired or replaced items and Purchaser's use of the Covered Hardware including the repaired or replaced components shall be subject to this Agreement and the Original Terms. For clarity, repaired or replaced items will be warranted to conform to the Specifications for 90 days from the date of installation or repair of such repaired or replaced item.

**7. Documentation Updates.** Seller shall use commercially reasonable efforts to provide updates to Documentation according to the terms of the Service Contract as they become available for

distribution. Whether a Documentation update is mandatory shall be determined by Seller in its sole discretion. All updates to Documentation and Purchaser's use of the Documentation shall be subject to this Agreement and the Original Terms.

**8. Replacement Parts.** All replacement parts and components provided by Seller will be new or refurbished, in Seller's sole discretion, and shall be furnished on an exchange basis. All Hardware or components thereof or other parts removed for replacement shall become the property of Seller. All replaced parts and components and Purchaser's use of the Covered Hardware including the replaced parts and components shall be subject to this Agreement and the Original Terms. For clarity, repaired or replaced items will be warranted to conform to the Specifications for 90 days from the date of installation or repair of such repaired or replaced item.

**9. Loaner Hardware.** Seller may choose to provide, in its sole discretion, loaner hardware or components to Purchaser to substitute for the Covered Hardware or a component thereof, while service is being provided. Seller will be responsible for all costs associated with the shipment of such loaner hardware or components to Purchaser's Site, exclusive of any taxes or duties, which are the sole responsibility of Purchaser. Loaner hardware or components shall be certified by Seller's Purchaser Solutions using the same criteria as used for new hardware or components. Loaner hardware or components shall remain the sole property of Seller, and must be returned within 30 days of Seller's request. Purchaser's use of loaner hardware or components shall be subject to Seller's current terms and conditions of sale that apply to such loaner hardware or component.

**10. Preventative Maintenance Visits.** Seller will provide a preventative maintenance on-site visit according to the terms of the Service Contract, which may result in two to three days of system down time to Purchaser. Seller shall cooperate with Purchaser to schedule such preventative maintenance visits at a time that is mutually convenient for both parties. All such preventative maintenance services will be provided by Seller designated service personnel. All travel, labor and parts/materials expenses associated with prescribed preventative maintenance visits, visits to service, repair or replace covered items, and applications support visits as provided for in the Service Contract are included in the price set forth for such Service Contract. Preventative maintenance services include testing and adjusting the Covered Hardware to the Specifications. If any preventative maintenance visit within the Term is precluded due to Purchaser's inability to provide a sufficient time period for such services and down time, Seller shall not be obligated to provide a substitute preventative maintenance visit. Seller shall not be liable for any economic, consequential, incidental, special or other damages or losses of any kind resulting from the down time during such preventative maintenance visits.

**11. Purchaser Responsibilities.**

- a. **Proper Use:** The performance of Covered Hardware when operated in corrosive environments, or in conditions, or in a manner, outside of the Specifications including Seller's site requirements found in the Documentation or not in accordance with its Documentation may have their performance adversely affected, and are therefore not guaranteed hereunder. The Purchaser agrees to use the Covered Hardware in a safe and reasonable manner pursuant to the Documentation and the Original Terms.
- b. **Access:** The Purchaser will provide Seller with access to the Covered Hardware along with adequate working space and facilities within a reasonable distance of the Covered Hardware. Access will

also be provided to all information and facilities that are reasonably necessary for Seller to service the Covered Hardware.

c. **Data Back-up and Security:** The Purchaser is responsible for maintaining a procedure to reconstruct any lost or altered files, data, or programs, as well as for the security of all confidential, proprietary, and classified information.

d. **Networking:** The Purchaser is responsible for maintaining all computer networking as it relates to the integration of any components of the Covered Hardware outside of such system and within the Purchaser's network.

e. **Representative:** A representative of Purchaser will be present on-site at all times service is being performed by Seller's designated service personnel.

f. **Toxic/BioHazardous Substances:** The Purchaser will notify Seller in writing if any Covered Hardware is used for analysis of toxic, hazardous or dangerous substances. Such Covered Hardware must be decontaminated by Purchaser in accordance with Seller's decontamination procedures and Purchaser shall fax a completed and executed Decontamination Certificate to Purchaser Solutions before any service may be performed on the Covered Hardware.

g. **Environment:** The Purchaser agrees to provide Seller's designated service personnel with a safe environment for their work.

h. **Disposal of Waste Products:** The Purchaser is responsible for the proper disposal of waste products that result from maintenance and service work on the Covered Hardware.

i. **Facilities:** The Purchaser is responsible for ensuring that the Site will adhere to Seller's site requirements found in the Documentation or Specifications. Any material deviation from Seller's site requirements affecting the proper functioning of the Covered Hardware shall relieve Seller of its obligations under this Agreement, including without limitation, under the Service Contract.

**12. Exclusions and Restrictions.** The terms of this Agreement cover maintenance and repair for conditions that result from normal use and operation as described in the Documentation for the Covered Hardware. Seller will not be obligated to perform maintenance or repair on any Covered Hardware which, in its reasonable judgment:

- a. Has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation other than installation performed by Seller authorised personnel, improper storage, improper handling, or use contrary to any instructions issued by Seller or has been used in any manner inconsistent with its Documentation;
- b. Has been repaired, altered, disassembled, reassembled, or damaged as a result of modifications made to the Covered Hardware that were not authorised in writing by Seller;
- c. Has been damaged by environmental conditions at the Site;
- d. Has not been installed, operated, repaired and maintained in accordance with its Documentation or has been damaged due to operators failing to perform standard operating procedures or routine maintenance as prescribed in the applicable Documentation;
- e. Has been moved from the Site by persons not expressly authorised in writing by Seller;
- f. Has been used with any third party software, hardware, or item including, without limitation, reagent which has not been previously approved in writing by Seller;
- g. Has been exposed to Bio-safety Level 3 or 4 agents (as defined by The Occupational Safety and Health Administration);
- h. Has been exposed to radioactivity, and has not been decontaminated to below exempt levels; or

i. Has been damaged due to an act of Force Majeure as defined herein.

**13. Services by Third Parties on Seller's Behalf.** Seller reserves the right to retain or contract outside vendors of its choosing to provide service and support hereunder. In any instance where the terms and conditions of such vendor's service, support, and warranty agreement conflicts with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern; provided, however that any exclusions on coverage contained in an OEM vendor's terms and conditions shall remain in full force and effect.

**14. Relocation of Hardware.** All Service Contracts terminate automatically with immediate effect and without the need for notice to Purchaser if Covered Hardware is moved to a different Facility. Upon such termination, Seller will credit Purchaser's account with Seller an amount equal to the unused portion of the Service Contract; provided that, Purchaser pre-paid for the Service Contract in full. If Seller conducts the move of the Covered Hardware on Purchaser's behalf then Seller and Purchaser will enter into a new Service Contract for such Covered Hardware at the new Facility.

**15. Export of Hardware.** Purchaser agrees not to move or relocate Covered Hardware outside of the country to which Seller originally shipped it without the expressly written authorization of an officer of Seller.

**16. Recertification Requirement.** Hardware not under an existing Service Contract is only eligible for a Service Contract if Seller has inspected the Hardware and its ancillary equipment and provided a written notice to Purchaser that the Hardware is eligible for a Service Contract ("**Recertification Requirement**"). Purchaser acknowledges that Hardware may have to be repaired, at Purchaser's sole expense, prior to being eligible for a Service Contract. Accordingly, Seller recommends that Purchaser renew its existing Service Contracts prior to their expiration.

**17. Renewal of Service Contract.** If Purchaser renews the Service Contract on a piece of Covered Hardware prior to the expiration of the Service Contract Seller will waive the Recertification Requirement.

**18. Early Termination of Service Contract.** Purchaser or Seller may, in their sole discretion, terminate the Service Contract early by providing 30 days prior written notice to the other. Upon such termination, Seller will credit Purchaser's account with Seller an amount equal to the unused portion of the Service Contract; provided that, Purchaser pre-paid for the Service Contract in full; and provided further that, the amount of such credit will be reduced by the amount of any discount Seller provided Purchaser as a result of Seller purchasing a multi-year Service Contract ("**Unearned Discount**"). In the event Purchaser's Unearned Discount exceeds the amount of credit that Seller would provide under this provision, Seller will invoice Purchaser the difference and such invoice shall be paid within 30 days.

**19. Non-Transferable.** All Service Contracts are personal to the original Purchaser of the Covered Hardware and may not be transferred or assigned to any third party.

**20. Force Majeure.** Seller shall not be in breach of these terms and conditions nor liable for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, any action taken by a government or regulatory authority, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Seller's suppliers or subcontractors, transportation difficulties, interruption or failure of any utility service,

raw materials or equipment, or Purchaser's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

**21. Unauthorised Activities.** Purchaser agrees not to, nor authorised any third party to, engage in any of the following activities: (i) to the extent not otherwise permitted by law to disassemble, reverse-engineer, reverse-compile, or reverse-assemble the Covered Hardware or an items provided hereunder (collectively "**Materials**"), (ii) to the extent not otherwise permitted by law to separate, extract, or isolate components of the Materials or subject the Materials or components thereof to any analysis not expressly authorised in the Documentation, (iii) to the extent not otherwise permitted by law to gain access to or attempt to determine the methods of operation of the Materials, or (iv) to the extent not otherwise permitted by law to transfer to a third-party, or grant a sublicense to, any Software or any third-party software provided hereunder. Purchaser further agrees that the contents of and methods of operation of the Materials are proprietary to Seller and the Materials contains or embodies trade secrets of Seller. The restrictions found in these terms and conditions—control the sale of and use of the Products by Purchaser.

**22. Limited Liability. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER OR ITS SUPPLIERS BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OF THE COVERED HARDWARE OR SERVICE CONTRACT, THE USE OF THE COVERED HARDWARE, THE ITEMS AND SERVICES PROVIDED HEREUNDER, SELLER'S PERFORMANCE HEREUNDER OR ANY OF THESE TERMS AND CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STATUTORY OR OTHERWISE).**

**TO THE EXTENT PERMITTED BY LAW, SELLER'S TOTAL AND CUMULATIVE LIABILITY TO PURCHASER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE COVERED HARDWARE OR ITEMS PROVIDED HEREUNDER (INCLUDING USE THEREOF), THE SERVICE CONTRACT, THE SERVICES PROVIDED HEREUNDER, AND SELLER'S PERFORMANCE HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STATUTORY DUTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID TO SELLER FOR THE SERVICE CONTRACT AND BILLABLE SERVICES.**

**23. Limitations on Warranties. TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS WARRANTIES MADE IN THESE TERMS AND CONDITIONS SELLER MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE COVERED HARDWARE, THE ITEMS PROVIDED HEREUNDER, THE SERVICE CONTRACTS, AND THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF**

**SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CARE AND SKILL, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.**

**NOTHING IN THESE TERMS AND CONDITIONS SHALL LIMIT LIABILITY OF A PARTY OR ITS AFFILIATED ENTITIES FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FRAUD.**