

1. **General.** Reference is made to the accompanying Instrument Support Agreement ("Instrument Support Agreement") entered into by and between Affymetrix, Inc. ("Affymetrix") and the customer identified therein ("Customer"). These Affymetrix Instrument Support Terms and Conditions ("Support Terms and Conditions") are incorporated into and are made a part of the Instrument Support Agreement. All references to the Instrument Support Agreement shall mean the Instrument Support Agreement signed by Affymetrix and Customer and these Support Terms and Conditions. The Instrument Support Agreement shall contain the entire understanding between the parties with respect to the services described therein ("Covered Services") pertaining to Affymetrix instruments which have been sold or leased by Affymetrix or its authorized distributors to Customer (the "Instrument(s)"), and any Affymetrix software installed on the workstation, which software is owned and licensed by Affymetrix to Customer (the "Applications"). Any part or subassembly of an Instrument that is sold or provided to Customer by Affymetrix shall be deemed "Covered Parts." The Applications and Instruments are collectively referred to herein as the "System."
2. **Services.** During the Term of this Instrument Support Agreement, and upon the terms and conditions set forth in the Service Support Agreement, Affymetrix shall provide to Customer the Covered Services, which may include:
 - a. **Repair and Maintenance.** Affymetrix or its designee shall perform all necessary repair service and standard preventative maintenance of the Instrument(s) or otherwise correct any material reproducible failure or malfunction. A failure or malfunction shall be "material" if it represents a substantial nonconformity with Affymetrix' current published specifications for the Instrument and Customer determines (and notifies Affymetrix) that such error or malfunction substantially interferes with Customer's normal use of the Instrument. Payment for all labor, travel and parts shall be as specified in the Instrument Support Agreement. Replaced products, components or subassemblies will be new or of equal performance of a new product, component or subassembly. All Affymetrix Instruments require a consistent and reliable power source in order to perform optimally. A dedicated circuit is recommended. Affymetrix assumes no responsibility for damage caused by any power supply circuit or related units.
 - b. **Customer Support.** Unless otherwise stated on the quote, telephone support shall be provided by Affymetrix during normal business hours 8am - 5pm Monday - Friday, excluding holidays. On-site support will be provided during normal business hours as indicated by Customer's service level option, when an on-site visit is determined to be needed upon consultation with Affymetrix service advisors.
 - c. **Software Revisions.** Affymetrix will provide or install, at Affymetrix' discretion, further releases or upgrades relating to the software used to control the Instrument. Any such releases or upgrades, when delivered, shall become part of the Applications and shall be maintained in accordance with the Instrument Support Agreement.
 - d. **Service Limitations.** Customer agrees to follow the operation procedures published by Affymetrix, including procedures for routine maintenance. Consumables, including tubing, are excluded from Covered Services. In addition, Affymetrix shall have no obligation to support any service or parts required as a result of the following:
 - (i) Customer abuse, neglect, misuse, accidents, or the failure to perform routine operational maintenance;
 - (ii) Improper or inadequate, adjustment, calibration or operation of the Instruments by Customer or its designee;
 - (iii) Modifications made to the Instrument or System without the prior written approval of Affymetrix;
 - (iv) Unapproved Relocation (as defined below) of the Instrument or System;
 - (v) Failure or fluctuation of electrical power, lightning or static; fire, water spill, flooding, chemical or reagents spill, earthquake, military or civil disturbance, or acts of God;
 - (vi) The use of media, supplies or other products not supplied or approved by Affymetrix;
 - (vii) The use of any equipment, software, or peripherals which are not part of the Instrument or System; or
 - (viii) The use of expired reagents or arrays supplied by Affymetrix or a third party,.

Customer shall reimburse Affymetrix at the then-current service call fees, including all labor, parts and travel charges, for all work of Affymetrix or its designee incurred in investigating and servicing any failure or malfunction that Affymetrix reasonably determines to not be part of the Covered Services.
3. **Limitations.** Any and all instruments, software, part or subassembly of the foregoing that is not an Instrument, Application or Covered Part shall be deemed "Non-Covered Equipment." Affymetrix shall have no obligations with respect to Non-Covered Equipment. Additionally, and notwithstanding anything herein to the contrary, Affymetrix shall have no obligation to provide Covered Services in connection with any Instruments:
 - (a) that have been substantially altered by Customer, including any serial numbers or other identifying markings;
 - (b) that do not incorporate all of Affymetrix engineering improvements or other fixes that Affymetrix requests Customers to implement;
 - (c) that incorporate Non-Covered Equipment or have Non-Covered Equipment attached to them;
 - (d) that have been operated in conditions outside of Affymetrix environmental or electrical site specifications, as defined in the product operation, installation or maintenance manuals provided with the Instruments; that have been operated in hazardous environments or used to analyze hazardous materials that may cause residual contamination; or
 - (e) that have been repaired or maintained by anyone other than Affymetrix or its designee, except such routine operational maintenance as set forth in the product operation, installation or maintenance manuals provided with the Instrument.
4. **Access and Service Safety.** Customer will provide Affymetrix and its designees reasonable and safe access to all Instruments and Systems for the provision of any services and for any audit of compliance with Affymetrix installation and operational guidelines. If environmental or operational contamination creates a hazard for Affymetrix personnel, Affymetrix may supervise Customer's performance of service procedures. Customer is responsible for proper disposal of all contaminated material and of

contaminated parts that cannot be safely returned to Affymetrix. Any Affymetrix services that Affymetrix may provide in connection with the activities contemplated by this paragraph shall be not constitute Covered Services, and Customer shall reimburse Affymetrix at Affymetrix' then-current service call fees, including all labor, parts and zone charges, for all such work of Affymetrix or its designee.

5. **Relocation of Covered Equipment.** If any Instrument is moved from its installation position, Affymetrix may, at its discretion, determine that such Instrument has been relocated (a "Relocation"). Customer shall contact Affymetrix prior to any Relocation. Relocation of Instruments may result in service charges as follows:
 - (a) **Approved Relocation.** Relocation of Instruments by Affymetrix or its designees is permitted. Instruments may be moved with the assistance of Affymetrix at Affymetrix' service call fees, including all labor, parts and travel charges. With prior written approval of Affymetrix, Customer may move specified Instruments without incurring any charges.
 - (b) **Unapproved Relocation.** Any Instrument Support Agreement or warranty covering an Instrument shall be rendered void and unenforceable by Relocation of such Instrument without the prior written approval of Affymetrix. At the discretion of Affymetrix, upon completion of a maintenance inspection and service at Affymetrix then current service call fees, including all labor, parts and travel charges, the subject Instrument Support Agreement or warranty may be reinstated.
6. **Obsolete Products.** Affymetrix shall use commercially reasonable efforts to maintain and repair Covered Parts, Instruments or System that are no longer offered for sale or license by Affymetrix ("Obsolete Items"). If Affymetrix determines in its discretion that support and service of such Obsolete Items is no longer reasonable, Affymetrix shall notify Customer of such determination and such Obsolete Item shall be deemed to not be a Covered Part, Instrument or System.
7. **Limited Life Parts.** Limited-life parts will be identified on the Instrument Support Agreement and will be deemed a Covered Part for thirty (30) days from installation, unless otherwise stated on the Instrument Support Agreement.
8. **Billable Services.** All services that are not Covered Services shall be billable to Customer at Affymetrix' then-current service call fees, including all labor, parts and travel charges.
9. **Ownership.** All parts removed from the System in connection with any services shall become the property of Affymetrix upon their replacement. Any and all modifications to the Instrument or System, including all intellectual property rights associated therewith, made or provided by Affymetrix pursuant to the Instrument Support Agreement, whether alone or with any contribution from Customer or its employees, agents or contractors, shall be owned exclusively by Affymetrix. To the extent Customer or its employees, agents or contractors, may acquire any right or interest therein by operation of law, Customer irrevocably assigns all such right and interest exclusively to Affymetrix. Customer shall maintain and enforce agreements and policies with its employees, agents and contractors sufficient to give effect to the provisions of this paragraph 9.
10. **Limited Warranty.** Affymetrix warrants that it will render the services pursuant to the Instrument Support Agreement in a workmanlike manner. Any claim based on the foregoing warranty must be submitted in writing in accordance with Affymetrix' standard procedures within thirty (30) days after delivery or the date of the required delivery of the services at issue. The foregoing is not intended to limit any warranty extended to Customer by a third party original equipment manufacturer of a product or component thereof, provided that any remedy received by Customer under any such warranty shall relieve Affymetrix of its obligations with respect to the subject of such remedy. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, AFFYMETRIX MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PERFORMED PURSUANT TO THE INSTRUMENT SUPPORT AGREEMENT. AFFYMETRIX SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.
11. **Limitation of Liability.** The total liability of Affymetrix (including its employees, agents, subcontractors and suppliers) for all claims, whether in contract, tort (including negligence, product liability and strict liability), or otherwise, arising out of, connected with, or resulting from any performance or on performance hereunder shall not exceed the total fees paid hereunder allocable to the services that give rise to the claim for the twelve (12) months preceding the date the claim is first made. In no event shall Affymetrix be liable for any incidental, consequential, indirect, or special damages (including, without limitation, damages for loss of revenue, cost of capital, claims of customers for service interruptions or failure of supply, and costs and expenses incurred in connection with labor, overhead, transportation, installation, or removal of equipment or programming or substitute facilities or supply sources), even if Affymetrix has been advised of the possibility of such damages.
12. **Term.** The term ("Term") of this Instrument Support Agreement shall be the period commencing on the effective date specified on the Instrument Support Agreement ("Effective Date"), and shall continue for the term specified in the Instrument Support Agreement. If no such term is specified in the Instrument Support Agreement, the Term shall be one year from the Effective Date.
13. **Cancellation Policy**
 - (a) Customer may terminate this Instrument Support Agreement by written notice to Affymetrix within 30 days from the Effective Date (the "First Month"). Upon termination by Customer within the First Month, Affymetrix shall refund Customer by an amount that is equal to the total fees paid by Customer less an amount that is the greater of (a) a prorated amount of fees for the first month of the Term; or (b) total charges (including time and material costs) for services rendered under this Instrument Support Agreement through the date of termination..
 - (b) After the First Month, Customer shall not have the option to terminate this Instrument Support Agreement and shall be obligated to pay all amounts payable by Customer under the Instrument Support Agreement in full.

(c) No termination of this Instrument Support Agreement will release the Customer from its obligation to pay Affymetrix for any amount owed or payable to Affymetrix through to the date of termination.

14. **Termination.** Affymetrix may terminate this Instrument Support Agreement immediately by giving written notice of termination to Customer upon the occurrence of any of the following events:

- (a) Customer defaults in the performance of any material requirement or obligation created by this Instrument Support Agreement or any other agreement between Affymetrix and Customer;
- (b) Customer fails to make any payments to Affymetrix within (30) days of its due date;
- (c) Customer ceases doing business; or
- (d) Customer is the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, makes an assignment for the benefit of creditors, is unable to pay its debts when due, a receiver is appointed for a substantial part of Customer's assets, or an action is taken toward the liquidation or winding up of Customer's business.

No termination of this Instrument Support Agreement shall release Customer from any obligation to pay Affymetrix any amount that has accrued or become payable through the date of termination.

15. **Force Majeure.** Affymetrix shall not be penalized for a failure to provide services in accordance to service plan specifications due to delays arising directly or indirectly from causes beyond Affymetrix' reasonable control, including without limitation, acts of God, unforeseeable circumstances, acts or omissions of any governmental authority, war, riot, revolution, fires, floods, earthquakes, strikes, labor disputes, sabotage, or epidemics, or failure to timely obtain instructions or information from Customer, or necessary and proper labor, materials, components, facilities or transportation. Affymetrix agrees to perform its obligations herein upon the resolution of the force majeure event.

16. **Notices.** Any notice to a party required or permitted hereunder shall be sufficiently given only when provided in writing, and either personally delivered or sent via certified or registered mail to the party's address. Customer shall give Affymetrix prompt notice of any address change.

17. **Miscellaneous.**

- (a) A failure by either party to enforce any right under this Instrument Support Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Instrument Support Agreement.
- (b) This Instrument Support Agreement shall obligate and benefit the parties and their respective successors and assigns, provided that no assignment or transfer of any interest in this Instrument Support Agreement (including sublicense, hypothecation, security interests, and the like) may be made by Customer without the prior written consent of Affymetrix.
- (c) The invalidity of enforceability of any provision of this Instrument Support Agreement shall not affect the validity or enforceability of any other provision, the remaining provisions being deemed to continue in full force and effect.
- (d) **For Instrument Support Agreements Outside Europe:** To the extent permitted by applicable law, this Instrument Support Agreement shall be governed by and construed under the laws of the State of California, regardless of its or any other jurisdiction's choice of law principles. **For Instrument Support Agreements Within Europe:** To the extent permitted by applicable law, this Instrument Support Agreement shall be governed by and construed according to the laws of England, without regard to conflict of law provisions.
- (e) Each party shall act solely as an independent contractor with respect to the other party, and nothing in this Instrument Support Agreement shall be construed to give either party the power or authority to act for, bind or commit the other party.
- (f) This Instrument Support Agreement is the entire agreement of the parties, and supersedes all prior agreements and communications, whether oral or in writing, between the parties with respect to the subject matter hereof. No amendment or modification of this Instrument Support Agreement shall be effective unless made in writing and signed by Affymetrix and Customer. Accordingly, no sales person or field representative of Affymetrix shall be authorized to act or make any commitment for Affymetrix. Parol evidence will be inadmissible to show agreement by and among the parties to any term or condition contrary to or in addition to the terms and conditions contained in this Agreement.