

CONTRACT AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

LIFE TECHNOLOGIES CORPORATION

THIS AGREEMENT (the "Contract") is made and entered into this ____ day of ____ 2013, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Office of the Medical Examiner and Life Technologies Corporation (hereinafter the "Provider"), with corporate offices located at 5791 Van Allen Way, Carlsbad, California 92008.

WHEREAS, the County has a present need for maintenance service for (two) 7500 Real Time PCR System; (one) 310; (one) 3130-4; and (two) 3500 Genetic Analyzer, at the Office of the Medical Examiner; and

WHEREAS, Provider, is the awarded vendor (sole source), for maintenance of the 7500 Real Time PCR Systems, 310, 3130-4 and 3500 Genetic Analyzers; and

WHEREAS, the County desires to avail itself of maintenance from the Provider for the 7500 Real Time PCR Systems; 310, 3130-4 and 3500 Genetic Analyzers, located at the Office of the Medical Examiner and Provider is willing to provide such service to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Provider and the County agree as follows:

ARTICLE I- AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Life Technologies shall provide the County with all maintenance on these instruments as set forth in Schedule A – Service Agreement Quotation attached herein and incorporated by reference herein. In the event that the terms and conditions of Schedule A and this Contract are not in agreement, the County and Provider hereby expressly agree that the terms and conditions of this Contract will be controlling and will take precedence over Schedule A.
- 1.2 Term. The term of this Contract shall commence on August 21, 2013, and shall continue, unless extended by the County or sooner canceled or terminated under the provisions of this Contract, until August 20, 2016. Maintenance service for each instruments should commence on the dates listed below:
 - 1.2.1 7500 Real Time PCR System, s/n 275001420 will commence as of August 21st 2013;
 - 1.2.2 310 Genetic Analyzer, s/n 100000042 will commence as of August 21st 2013;
 - 1.2.3 3130-4 Genetic Analyzer, s/n 20351-027 will commence as of August 21st 2013;

- 1.2.4 3500 Genetic Analyzer, s/n 23139-131 will commence as of January, 5th, 2014;
- 1.2.5 7500 Real Time PCR System, s/n 275007802 will commence as of July 25, 2014; and
- 1.2.6 3500 Genetic Analyzer, s/n 25181-010 will commence as of August 21st 2015 _

ARTICLE II-SCOPE OF WORK

- 2.1 Rendering of Services. Provider hereby agrees to render the services identified in Article 1.1 and incorporated by reference herein at a total price which, except as provided in Section 1.2, shall not exceed the amount of \$78,796.63.

ARTICLE III-PAYMENT AND INVOICING

- 3.1 Payment During the term of this contract, the County shall pay Provider annually, for all services performed under this Contract, upon receipt of said invoice and the approval of the Cuyahoga County Executive. In no event shall total compensation under this Contract, including expenses, exceed 78,796.63.
- 3.2 Invoicing. The Provider shall submit an annual original invoice, submitted to the Office of the Medical Examiner, at the address noted below:

Cuyahoga County Medical Examiner's Office
Attention: Toni Wlosowicz
11001 Cedar Avenue
Cleveland, Ohio 44106

ARTICLE IV - INDEMNITIES AND LIABILITIES

- 4.1 Subcontracting. This Contract was awarded to Life Technologies Corporation based upon Provider's unique qualifications and skills, and no task required to be performed under this contract by Provider shall be subcontracted to third parties without the express written consent of Cuyahoga County.
- 4.2 Indemnification. Provider shall agree to release, indemnify, defend and hold harmless County and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability arising out of Provider's negligence, error, act, omission or willful misconduct during the performance of this Contract. Provider acknowledges that as a political subdivision, the County is prohibited by law from entering into an indemnification agreement and that no provision of this Contract or any other contract or agreement between Provider and the County may be interpreted to obligate the County to indemnify Provider or any other party.

Notwithstanding anything to the contrary in this Contract, Provider shall in no event be liable for consequential, indirect, multiple, collateral, loss of use, loss of business or any other form of special damages. LIFE TECHNOLOGIES' MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY PRODUCT OR SERVICE, IS LIMITED TO THE CONTRACT AMOUNT THE COUNTY PAID FOR THE PRODUCT OR SERVICE PURCHASED. However, this provision does not limit Life Technologies' liability for death or personal

injury caused by Life Technologies' negligence or fraud, fraudulent misrepresentation or any other liability that cannot be excluded by law.

Any limitation of liability set forth in this Contract shall not preclude the County from claiming under any insurance placed or provided pursuant to the Contract up to the full amount payable under such insurance.

ARTICLE V- DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution. a) In the event of any dispute or disagreement between Provider and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Provider or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

5.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. Provider, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that Provider becomes financially

unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Provider of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI- ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 6.1. Electronic Signature. By entering into this Contract, Provider, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.
- 6.2. Compliance with O.R.C. Provider further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

ARTICLE VII- INSURANCE

A. The Provider shall procure, maintain, and pay premiums for the following forms of insurance:

- (i) Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

Worker's Compensation Insurance as required by the various state and Federal laws as applicable, including Employers' Liability coverage, shall have limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- (ii) Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;

\$2,000,000 general aggregate;

\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- (iii) Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- (iv) Errors & Omissions Liability Insurance providing coverage for claims arising out of the provision of professional services with a limit of liability not less than:

\$1,000,000 per claim;

\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

B. Mandatory Requirements for All Insurance Coverage

- (a) The insurance policies of the Provider required above with the exception of Workers Compensation Insurance and Errors & Omissions shall each name the "County of Cuyahoga, Ohio" as an Additional Insured and shall contain the following provisions:
 - (b) Thirty (30) days prior notice of cancellation or material change;

- (i) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- (ii) The insurance required above shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- (c) These insurance provisions shall not affect or limit the liability of the Provider stated elsewhere in this Contract or as provided by law.
- (d) The Provider shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

The Provider shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

ARTICLE VIII MISCELLANEOUS

- 8.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Medical Examiner's Office
11001 Cedar Avenue
Cleveland, Ohio 44106

In the case of the Provider:

Life Technologies Corporation
12088 Collections Center Drive
Chicago, Illinois 60693

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

8.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.**Waiver.** No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

8.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

8.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

8.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

8.7 Social Security Act. Provider shall be and remain an independent Provider with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment

insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by Provider for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Provider also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

8.8 Assignment. Provider shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County Executive.

8.9 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the County Executive before compensation for the services or products set forth in this contract can be provided. Upon approval by the County Executive of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

8.10 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

8.11 Confidentiality. The parties acknowledge and agree that during the term of this Agreement, Life Technologies Corporation shall act exclusively in the best interest of the Office of the Medical Examiner. Life Technologies Corporation acknowledges that they may have access to information which is confidential and proprietary in nature. Life Technologies Corporation expressly agrees not to use or disclose such information in any manner or for any purpose at any time during or after the effective term of this Agreement except as required by law or as required during the course of Life Technologies Corporation work for the Office of the Medical Examiner, unless authorized in writing by the Medical Examiner.

8.12 Applicable County Ordinances. All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

8.13 Public Records. All parties hereto acknowledge that County is a political subdivision in

the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, the County and Provider have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

Life Technologies Corporation

Cuyahoga County, Ohio

BY: 

Printed Name: TERESA BRYSON
Title: SALES CONTRACTS MANAGER

Edward FitzGerald, County Executive

BY: 

Edward FitzGerald
County Executive

SERVICE AGREEMENT QUOTATION

Life Technologies Corporation
North American Sales and Service
1149 Chess Drive
Mail Stop: 447
Foster City, CA 94404 U.S.A.
Tel: (800)955-6288, opt. 3,2
Fax: (650)638-6030
Email: Service.Sales@LifeTech.com

TO Toni Wlosowicz
CUYAHOGA COUNTY MEDICAL EXAMINER
2121 Adelbert Rd
CLEVELAND OH 44106

QUOTE NO. 40387935
ORIGINAL QUOTATION DATE 03/26/2013
REVISION DATE 08/08/2013
EFFECTIVE 08/21/2013 TO 08/20/2016
PAGE 1 OF 7
QUOTE VALID TO 08/20/2013

TELEPHONE: (216) 698-6526
FAX: (216) 707-3121
YOUR REFERENCE: revision #2

Customer PO No.

This agreement is entered into between Life Technologies and the undersigned Customer in consideration of the payments provided for in this Agreement. Subject to the terms and conditions of this Agreement, Life Technologies agrees to perform the services set forth on the attachment to this Agreement on the equipment listed below for the period described.

ITEM NO.	QTY.	EQUIPMENT DESCRIPTION/ EFFECTIVE DATES/ NOTES	SERIAL NUMBER	COVERAGE	EXTENDED PRICE USD
0010	1	7500 Real Time PCR System 3 full years Begin Date: 08/21/2013 End Date: 08/20/2016	(275001420)	AB Assurance 1PM	\$ 11,159.61
0030	1	3130-4 Genetic Analyzer 3 full years Begin Date: 08/21/2013 End Date: 08/20/2016	(20351-027)	AB Assurance 1PM	\$ 19,587.84
0040	1	3500 Genetic Analyzer prorated first year + 2 full years Begin Date: 01/05/2014 End Date: 08/20/2016	(23139-131)	AB Assurance 1PM	\$ 16,940.71
0050	1	7500 Real Time PCR System prorated first year + 2 full years Begin Date: 07/25/2014 End Date: 08/20/2016	(275007802)	AB Assurance 1PM	\$ 7,709.73

Terms of payment are net 30 days from invoice date. This quotation is subject to the terms and conditions attached. Stenographical and clerical errors on the face of this form are subject to correction.

NOTE: Customer is responsible for applicable taxes, including sales, use and/or excise tax.

PLEASE SIGN THIS SERVICE AGREEMENT QUOTATION AND RETURN A COPY ALONG WITH YOUR PURCHASE ORDER.

ACCEPTED BY CUSTOMER

Signature of authorized person

Please print name and title Date

Caroline Swirsky

Service Sales Representative

Dawn 08/08/2013

Prepared by Date

~ NOTICE OF CONFIDENTIALITY~ The contents of this quotation including but not limited to pricing and services information are confidential to Life Technologies and/or its affiliate(s). This quote and its contents are intended only for the customer named in this quote and not for distribution to any third party.



Invitrogen and Applied Biosystems
are now by Life Technologies

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SERVICE AGREEMENT QUOTATION

Life Technologies Corporation
North American Sales and Service
1149 Chess Drive
Mail Stop: 447
Foster City, CA 94404 U.S.A.
Tel: (800)955-6288, opt. 3,2
Fax: (650)838-6030
Email: Service.Sales@LifeTech.com

QUOTE NO. 40387935
ORIGINAL QUOTATION DATE 03/26/2013
REVISION DATE 08/08/2013
EFFECTIVE 08/21/2013 TO 08/20/2016

QUOTE VALID TO 08/20/2013

ITEM NO.	QTY.	EQUIPMENT DESCRIPTION/ EFFECTIVE DATES/ NOTES	SERIAL NUMBER	COVERAGE	EXTENDED PRICE USD
0060	1	3500 Genetic Analyzer 1 full year to begin after current coverage Begin Date: 08/21/2015 End Date: 08/20/2016	(25181-010)	AB Assurance 1PM	\$ 6,450.30
0070	1	310 Genetic Analyzer 3 full years (not currently covered, LT is waiving recertification charges) Begin Date: 08/21/2013 End Date: 08/20/2016	(310000832)	AB Assurance 1PM	\$ 16,948.44
Total net price:					\$ 78,796.63

~ NOTICE OF CONFIDENTIALITY~ The contents of this quotation including but not limited to pricing and services information are confidential to Life Technologies and/or its affiliate(s). This quote and its contents are intended only for the customer named in this quote and not for distribution to any third party.



InVitrogen and Applied Biosystems
are now by Life Technologies

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SERVICE AGREEMENT QUOTATION

Life Technologies Corporation
North American Sales and Service
1149 Chess Drive
Mail Stop: 447
Foster City, CA 94404 U.S.A.
Tel:(800)955-6288, opt. 3,2
Fax:(650)638-6030
Email: Service.Sales@LifeTech.com

QUOTE NO. 40387935
ORIGINAL QUOTATION DATE 03/26/2013
REVISION DATE 08/08/2013
EFFECTIVE 08/21/2013 TO 08/20/2016

QUOTE VALID TO 08/20/2013

ITEM NO.	QTY.	EQUIPMENT DESCRIPTION/ EFFECTIVE DATES/ NOTES	SERIAL NUMBER	COVERAGE	EXTENDED PRICE USD
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Contract Notes:

Your current agreement will expire on 08/20/2013.

Previous purchase order no. CE1200243.

***** SPECIAL OFFER*****

Recertification has been waived for item 70 (310 s/n 310000832) and quoted price includes a 24% Multiple Year / Multiple Instrument Discount.

Quote is valid if the following conditions are met:

- 1) Life Technologies receives a copy of the purchase order prior to the expiration.
- 2) The purchase order specifies annual or advanced billing.
- 3) The purchase order total matches the total quoted amount.
- 4) Contract Period is 3 years.
- 5) Five or more instruments are placed under one contract.

If annual billing is requested and the above conditions are met, Life Technologies will immediately send one of three invoices that reflects the annual discounted price.

Subsequent invoices will be issued at the beginning of each contract year.

To expedite your order, the signed service agreement and purchase order may be faxed to 650-638-6030 or emailed to service.sales@lifetech.com.

-Payment is due 30 days from invoice date.

-Applicable taxes are extra.

Please contact your Service Sales Representative for further information.

Caroline Swirsky

direct tel: 905-567-8442

toll free: 800-955-6288 option 3, 2

direct email: Caroline.Swirsky@LifeTech.com

team email: Service.Sales@LifeTech.com

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Terms of Life Technologies Service Plans North America

The Life Service Agreement Terms and Conditions set forth below after the Plan description(s) are incorporated into and are an integral part of each Service Plan, and are agreed to by you as part of any Service Plan ordered.

AB Assurance Plan

1. Parts, labor and travel for remedial repair.
2. No charge for planned maintenance visits. The number of planned maintenance visits LT estimates will be performed during the plan period is indicated in LT's quotation (A).
3. Guaranteed priority response time of 2 business days after receipt of a service call for instruments located in LT's Service Zones 1 and Zone 2. If LT fails to arrive at the instrument location within Zone 1 or Zone 2 within 2 business days for reasons other than customer's failure to provide access to LT or causes beyond the reasonable control of LT, LT will provide customer a service plan renewal credit in an amount equivalent to one day's pro-rated charge for each day LT's response is late. (See footnote (B) for call time cut off, other details, and terms and conditions).
4. Target response time of 3 business days for remedial repairs outside of Zones 1 and 2. LT will use reasonable efforts to respond within 3 business days from receipt of a service call.
5. Priority telephone and email access to instrument technical support.
6. Telephone and email access to application technical support.
7. Remote Monitoring and Dx Service, which provides for notification to customer of instrument failures or errors that are reported by AB's Remote Monitoring software.

Important Notes and Footnotes

It is customer's responsibility to provide access to LT so LT may complete service, planned maintenance, Installation Performance Verification, and other service calls within the plan period. Calls not completed within a plan period will be cancelled unless LT failed to make reasonable efforts to complete the call within the plan period.

(A) Planned maintenance visits are intended to minimize the need for service calls. LT may perform more than the number of planned maintenance visits indicated in LT's quotation, at LT's discretion. Customer will not be charged for any planned maintenance visits made during the plan period, except for visits that are in addition to the number indicated in LT's quotation that are requested by customer.

(B) A service call must be received by LT's service center before 2:00 PM local time (U.S.A. Eastern, Central, Mountain, or Pacific time) for priority response time service. Each late day's pro-rated credit is an amount equal to 1/365th of the annual fee for the service plan covering the instrument with respect to which the service call was made. If a service plan covers more than one instrument, the pro-rata credit is determined by allocating a pro-rata portion of the plan's annual fee to the instrument with respect to which the service call was made. The credit may be used by customer when renewing its current service plan covering that instrument for a consecutive period, as a credit against plan fees. To be eligible to use the credit, LT's Service Plan Administrator must receive notice in writing (e-mail notification is satisfactory) of the customer's intention to use the credit for a renewal at the time of renewal, but in any event no later than fifteen (15) days after the expiration of the service plan period in which the credit was earned. The credit described above is LT's sole obligation and customer's sole remedy for failure of LT to respond to a service call within one business day for the LT Complete Plan and LT Uptime Plan and two business days for the LT Assurance Plan. The address of LT's Service Plan Administrator is Life Technologies Service Plan Administrator, 1149 Chess Drive Foster City, California 94404 (e-mail: Service.Sales@LifeTech.com).

Life Technologies Instrument Services Terms and Conditions

Welcome to Life Technologies and thank you for your interest in our instrument services. We at Life Technologies strive to provide industry leading services for your instruments. We value your business and our goal is to make your purchasing experience as smooth as possible. If you have any questions about our quotation or ordering process, please call 1-800-955-6288.

1. Services we provide. We offer repair, maintenance, relocation, recertification, training, qualification, and technical and application support services for your instruments and devices (we will refer to these services as "Instrument Services" in this document). We provide (i) time and materials Instrument Services, (ii) fixed-price Instrument Services (a la carte), and (iii) post-product warranty maintenance and repair contracts we call "Service Plans". We will perform most Instrument Services in your lab, but we may perform some Instrument Services for smaller instruments at Life Technologies.

2. Our contract with you. These are the contract terms and conditions under which we sell our Instrument Services to you ("Service Terms") unless we specifically designate other terms to apply to a specific service, or if you and we have entered into a master services agreement or other written agreement that expressly provides that its terms supersede and replace these Service Terms with respect to the services covered by the master purchase or other agreement. These Service Terms, together with our quotation, and, if you are buying a Service Plan, the service level description of individual Service Plan that you buy, create the contract ("Contract") between you and us for the purchase and sale of Instrument Services. The Contract between you and us is created when we accept your order, either by sending a written confirmation or performing the Instrument Services. The Contract is between you and the Life Technologies' entity that appears on our quotation, order confirmation, or dispatch note. If any terms within the Contract documents conflict with each other, we will give them the following order of precedence with the document listed first being given a higher order of priority: these Service Terms, the quotation, and, if you are buying a Service Plan, the service level description of the Service Plan.

3. Price. The price for Instrument Services is shown in our quotation to you. If we do not provide you with a quotation, the price will be the list price that applies to your country on the date we receive your order. Our prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. If we pay them, we will add them to your invoice.

4. Payment Terms. Unless we indicate another period on our quotation, you must pay invoices within thirty (30) days from the invoice date in the currency specified in our invoice. Each order is a separate transaction, and you may not set-off payments from one order against another. If you are late in making payment, without affecting our other rights, we may suspend performance or cancel your contract, reject your future orders, and charge you a late-payment charge, from the due date until paid, at the rate of one percent (1%) per month (12% per year) or, if less, the maximum amount allowed by law. You agree to pay this late charge upon request. You agree to pay all reasonable costs of collection, including reasonable attorneys' fees.

5. Scheduling. We provide Instrument Services Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding holidays, and we will work with you to schedule Instrument Services at a time that is mutually convenient.

6. Decontamination and Safe Working Environment. Before we perform any Instrument Services on your instrument, you will fully decontaminate your instrument or its component of radioactive, biological, toxic or other dangerous materials or substances or any material and, if we request, you will submit to us an accurate and completed certificate of decontamination. If we request, you agree to move your instrument to another location that we reasonably deem is safe for our employees to perform Instrument Services. We do not service instruments in biosafety level-3 laboratories, unless we agree otherwise in writing in advance. There may be an additional charge and additional terms for Instrument Services in such facilities. We do not service instruments in biosafety level-4 laboratories.

7. Spare Parts. We will repair or replace any parts of the instrument on the basis of which approach will provide the customer with the best service. We may use new, used, or reconditioned parts. We may retain any replaced part as our property.

8. Service Plans

8.1 For service level descriptions of our Service Plans, please go to <http://www.invitrogen.com/site/us/en/home/Products-and-Services/Services/instrument-qualification-services/instrument-services/service-plans.html>

We may require instrument recertification on a time and materials basis before we cover your instrument under a Service Plan if your instrument has not been under our warranty or our service plan immediately prior to the time of coverage.

8.2 Service Plans cover only our instruments and do not include ancillary equipment even if we have supplied them unless we stated otherwise in our quotation. Our Service Plans do not cover replacement of consumables.

8.3 Our Service Plans do not cover replacement of parts or repairs needed for defects or damage resulting from (i) your neglect, carelessness, or misuse, for example, connecting the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, using incompatible solvents or samples with the instrument, operating the instrument not in conformance with our instructions or specifications, or your improper or inadequate maintenance of the instrument; (ii) installation of software or use in combination with software or products that we did not supply or authorize; (iii) modification, repair, service transfer to another location of the instrument that you or your employees, agents or an unauthorized contractor made; (iv) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; from acts of nature or accident; or (v) any defects or damage that we did not cause.

8.4 You or we may cancel your Service Plan by sending a written notice of cancellation to the other thirty (30) days before the cancellation becomes effective. However, we may immediately terminate a Service Plan if the instrument covered by the Service Plan is transferred to another location without our advance written consent. If a Service Plan is cancelled, we will charge you for 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 cancellation date or the prorated price of the underlying Service Plan from its effective date until the cancellation date, whichever is greater, plus fifteen percent (15%) of the total fee paid for the underlying Service Plan. We will credit you for any payment that you made to us in excess of this amount and you may use the credit toward future purchases from us of instruments, consumables or Service Plans. We do not provide cash refunds on account of the early cancellation of any Service Plan or other agreement for Instrument Services.

9. Support . Technical and application support through telephone and email is available during normal working hours (5:00 AM to 5:00 PM

(PST), excluding holidays).

10. Planned Maintenance Services. We will perform planned maintenance services ("PM") in accordance with our PM procedures and checklist for the instrument or component we are servicing.

11. Training Services. We will conduct training in accordance with the course agenda indicated in our quotation or our training documentation. Except as indicated in our quotation, we will conduct training at one of our locations and you will pay for the travel, accommodation, and other expenses of your employees.

12. Relocation Services. We offer relocation services on a time and materials basis. We will de-install and re-install your instruments but you are responsible for the transport of your instrument to the new location.

13. Limited Warranty for Instrument Services. We warrant that the Instrument Services we provide to you will be in accordance with the generally accepted standards prevailing in the Instrument Service industry. You must make any claim for breach of this warranty within ninety (90) days of the date the Instrument Services were performed and prior to any unauthorized repair, change, or modification has been made to any part of the instrument. Our total liability under this warranty is limited to, at our option: (i) re-performance of the defective Instrument Services, or (ii) refunding to you the fee paid for the defective Instrument Services. WITH RESPECT TO INSTRUMENT SERVICES, WE MAKE NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

14. Compliance with Law. We make no representation that the Instrument Services we provide to you will meet or satisfy standards of any governmental body, including the U.S. Food and Drug Administration. You agree that it is your responsibility to ensure that such services are adequate to meet your regulation or certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the U.S. Food and Drug Administration are your responsibility.

15. Indemnification. We will indemnify and hold you harmless from and against any and all third-party claims for injury to persons, including death, or damage to tangible property occurring while our employees are on your premises to the extent the claims are caused by our employees' negligent acts or negligent omissions, provided we are given prompt notice of any claim and the opportunity to control the defense and settlement of the claim.

16. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT YOU MIGHT INCUR UNDER THE CONTRACT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. WE WILL NOT BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT, EQUIPMENT, OR PRODUCT ERROR OR THE FAILURE OF AN INSTRUMENT, EQUIPMENT, OR OTHER PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER OUR THIRD PARTY INDEMNITY AS SET FORTH IN SECTION 15, OUR TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THESE SERVICE TERMS, ANY SERVICE PLAN, OR INSTRUMENT SERVICES, INCLUDING WITHOUT LIMITATION ANY SERVICES RENDERED THEREUNDER, OR BREACH THEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES YOU PAID US FOR THE SPECIFIC SERVICE PLAN OR, INSTRUMENT SERVICES THAT GIVE RISE TO YOUR CLAIM.

17. Assignment. You may not transfer or assign your Service Plan or any contract with us for Instrument Services. Any attempted transfer or assignment will be void.

18. Intellectual Property. Nothing in these Service Terms shall be deemed or construed as a license or grant of any intellectual property rights, whether express, implied, by estoppel, or otherwise to you, or to limit our rights to enforce our patent or other intellectual property rights.

19. Governing Law. The Contract and performance under it will be governed by the laws of the State of California, USA, without regard to provision on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

20. Miscellaneous.

20.1 We will not be responsible or liable for failing to perform our obligations under the Contract to the extent caused by circumstances beyond our reasonable control.

20.2 Our failure to exercise any rights under the Contract is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Contract is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Contract. No person other than you or us will have any rights under the Contract. Headings are for convenience only and shall not be used in the interpretation of these Terms.

20.3 You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation), manuals or instructions received from us as a result of discussions, negotiations and other communications between us in relation to our products or services.

21. Entire Contract.

21.1 The Contract represents the entire agreement between you and us regarding the Instrument Services we provide to you under it, and supersedes and replaces any previous agreements between us (whether written or oral) covering the same subject matter unless you and we have entered into a master services agreement or other written agreement that expressly provides that its terms supersede and replace these Service Terms with respect to the services covered by the master purchase or other agreement. Any of your additional or different terms and conditions that you may provide to us, are material alternations and we reject them. Our offer to sell and perform Instrument Services is expressly limited to the terms of the Contract. If you submit a purchase order, or other document for the purchase of products or services, whether or not in response to a quotation, you are deemed to have accepted and agree to the Contract, to the exclusion of (a) any other terms and conditions appearing in or referenced in your purchase order or other documents you give to us, and (b) any previous course of dealing, course of performance, trade usage or co-existent agreement. The Contract cannot be amended or modified unless you and we agree in writing.

21.2 We reserve the right to change these Terms at any time. Any changes made to these Terms will not apply to the Contract between us for any order we receive before the changes are made.

