

CONTRACT
SERVICE MAINTENANCE AGREEMENT
by and between
CUYAHOGA COUNTY, OHIO
and
APPLIED BIOSYSTEMS, LLC

THIS AGREEMENT (the "Contract") is made and entered into this 21st day of June, 2011, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Cuyahoga County Medical Examiner's Office and Applied Biosystems LLC ("AB"), a California company with an office located at 850 Lincoln Centre Drive, Foster City, CA 94404. (the "Provider")

WHEREAS, the County has a present need for maintenance service of AB's 7500 Real Time PCR System, at the Cuyahoga County Medical Examiner's Office; and

WHEREAS, AB, is the awarded vendor (sole source), for maintenance of 7500 Real Time PCR System; and

WHEREAS, the County desires to avail itself of maintenance from AB for 7500 Real Time PCR System, located at the Cuyahoga County Medical Examiner's Office and AB 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, AB and the County agree as follows:

ARTICLE I -- AGREEMENT AND TERM

- 1.1 **Scope of Agreement.** During the term of this Contract, AB shall provide the County with all maintenance on the 7500 Real Time PCR System as set forth in Schedule A - 7500 Real Time PCR System Maintenance Contract 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 AB 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 as of July 1, 2011; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of one year from commencement date. (07/01/11 – 06/30/12). The cost of this Contact shall not exceed **Four Thousand Six Hundred Eighty-One Dollars and Eighty Cents (\$4681.80).**

ARTICLE II – SCOPE OF WORK

2.1 Rendering of Services. AB hereby agrees to render the services identified in Article 1.1 and Schedule A attached hereto and incorporated by reference herein at a total price which shall in no event exceed the amount of, **Four Thousand Six Hundred Eighty-One Dollars and Eighty Cents (\$4681.80).**

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay AB one payment of **\$4,681.80**, for maintenance services upon receipt of said invoice and the approval of the Cuyahoga County Executive.

3.2 Invoicing. AB shall invoice the County for Maintenance Service. AB shall submit original invoice(s) to the following address:

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

ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 Subcontracting. This Contract was awarded to AB based upon AB's unique qualifications and skills, and no task required to be performed under this contract by AB shall be subcontracted to third parties without the express written consent of Cuyahoga County.

4.2 Indemnification. AB shall agree to release, indemnify and to hold harmless Cuyahoga County and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for its gross negligence or willful misconduct under this contract.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between AB and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by AB 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. AB, 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 AB 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 AB 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. By entering into this Contract, AB, 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 AB 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 – MISCELLANEOUS

7.1 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 AB:

Applied Biosystems LLC
850 Lincoln Centre Drive
Foster City, California 94404

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.

7.2 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.

7.3 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.

7.4 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.

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

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

7.7 Social Security Act. AB shall be and remain an independent contractor 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 AB 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 AB also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

7.8 Assignment. AB 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.

7.9 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.

7.10 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.

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 AB have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

Applied Biosystems LLC

Cuyahoga County, Ohio

BY:

Philip G. Balsbaugh

Philip G. Balsbaugh
Sr. Contract Sales Manager

BY: X

Ef

Edward FitzGerald
County Executive

Schedule A
(5 pages)

AB applied biosystems®
by life technologies™

North American Sales and Service
850 Lincoln Centre Drive
Mail Stop: 401-2
Foster City, CA 94404 U.S.A.
Tel: (800)327-3002, opt.1.4 Fax: (650)638-6030
Email: ServiceSales@AppliedBiosystems.com

**SERVICE AGREEMENT
QUOTATION**

<input type="checkbox"/>	Dr Frank Miller III	QUOTE NO.	40343968
	Coroner	ORIGINAL QUOTATION DATE	02/28/2011
	Cuyahoga County Coroners Office	REVISION DATE	03/04/2011
TO	11001 Cedar Ave	EFFECTIVE	07/01/2011 TO 06/30/2012
	CLEVELAND OH 44106	PAGE	1 OF 5
		QUOTE VALID TO	06/30/2011

TELEPHONE: 216-721-5610-4038
 FAX: 216-721-2559
 YOUR REFERENCE:

Customer PO No. _____

This agreement is entered into between Applied Biosystems and the undersigned Customer in consideration of the payments provided for in this Agreement. Subject to the terms and conditions of this Agreement, Applied Biosystems 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	UNIT PRICE/ MONTH USD	EXTENDED PRICE USD
0010	1	7500 Real Time PCR System Begin Date: 07/01/2011 End Date: 06/30/2012	(275001420)	AB Assurance 1PM	\$ 390.15	\$ 4,681.80
						Total net price: \$ 4,681.80

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

Cindy Kaczanowski

Service Sales Representative

Maestro User 03/04/2011

Prepared by Date

North American Sales and Service
850 Lincoln Centre Drive
Mail Stop: 401-2
Foster City, CA 94404 U.S.A.
Tel:(800)327-3002, opt.1,4 Fax:(650)638-6030
Email: ServiceSales@AppliedBiosystems.com

SERVICE AGREEMENT QUOTATION

QUOTE NO.	<u>40343968</u>
ORIGINAL QUOTATION DATE	<u>02/28/2011</u>
REVISION DATE	<u>03/04/2011</u>
EFFECTIVE	<u>07/01/2011 TO 06/30/2012</u>

QUOTE VALID TO 06/30/2011

ITEM NO.	QTY.	EQUIPMENT DESCRIPTION/ EFFECTIVE DATES/ NOTES	SERIAL NUMBER	COVERAGE	UNIT PRICE/ MONTH	EXTENDED PRICE USD

Contract Notes:

Your current agreement will expire on 06/30/2011. To expedite your order, the signed performance agreement and purchase order may be faxed to 650-638-6030.

Please refer to current purchase order no. 1003630.

Lock in today's service contract price for 2 or more years.
ADDITIONAL DISCOUNTS APPLY FOR MULTIPLE YEAR CONTRACTS.

Please contact your Sales Representative for more information.

tel: 1-800-327-3002, option 1, 4
email: ServiceSales@appliedbiosystems.com

Payment is due 30 days from invoice date.
Applicable taxes are extra.

SERVICE AGREEMENT QUOTATION

North American Sales and Service
850 Lincoln Centre Drive
Mail Stop: 401-2
Foster City, CA 94404 U.S.A.
Tel:(800)327-3002, opt.1,4 Fax:(650)638-6030
Email: ServiceSales@AppliedBiosystems.com

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ITEM NO.	QTY.	EQUIPMENT DESCRIPTION/ EFFECTIVE DATES/ NOTES	SERIAL NUMBER	COVERAGE	UNIT PRICE/ MONTH	EXTENDED PRICE USD

Terms of Applied Biosystems Service Plans North America

The Applied Biosystems 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 customer as part of any Service Plan ordered by customer.

AB Assurance Plan

1. Parts, labor and travel for remedial repair.
2. No charge for planned maintenance visits. The number of planned maintenance visits AB estimates will be performed during the plan period is indicated in AB's quotation (A).
3. Guaranteed priority response time of 2 business days after receipt of a service call for instruments located in AB's Service Zones 1 and Zone 2. If AB 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 AB or causes beyond the reasonable control of AB, AB will provide customer a service plan renewal credit in an amount equivalent to one day's pro-rated charge for each day AB'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. AB 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. Smart Services remote monitoring, which provides for notification to customer of instrument failures or errors that are reported by AB's Smart Services monitoring software.

Important Notes and Footnotes

It is customer's responsibility to provide access to AB so AB 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 AB 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. AB may perform more than the number of planned maintenance visits indicated in AB's quotation, at AB'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 AB's quotation that are requested by customer.

(B) A service call must be received by AB'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, AB'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 AB's sole obligation and customer's sole remedy for failure of AB to respond to a service call within one business day for the AB Complete Plan and AB Uptime Plan and two business days for the AB Assurance Plan. The address of AB's Service Plan Administrator is Applied Biosystems Service Plan Administrator, 850 Lincoln Centre Drive, Foster City, California 94404 (e-mail: ServiceSales@AppliedBiosystems.com).

APPLIED BIOSYSTEMS SERVICE AGREEMENT TERMS AND CONDITIONS

1. These Service Agreement Terms and Conditions shall govern all orders for and purchases from Applied Biosystems ("AB") of services and parts under an AB Service Plan and other services relating to instruments and other equipment, including the maintenance, repair, installation, relocation or servicing of instruments and other equipment and including instrument training; and sets forth the agreement between AB and its customer regarding the performance of such services, unless other terms are specifically designated by AB to apply to a specific service (See Section 20 below).
2. Services are provided during normal working hours (Monday through Friday, 8:00 AM to 5:00 PM, excluding holidays). Telephone support hours are 5:00 AM to 5:00 PM Pacific Standard Time, excluding holidays. Planned maintenance ("Planned Maintenance") will be performed in accordance with AB's Planned Maintenance procedures and checklist for the instrument or component being serviced. Training services will be conducted by AB in accordance with the course agenda indicated in AB's Quotation. Except as indicated in AB's quotation, training will be conducted at an AB's location and customer will bear the travel, accommodation and other expenses of customer's employees. AB may require instrument recertification on a time and materials basis as a condition to performing services if an instrument has not been under warranty or a service plan immediately prior to the time of service.
3. The decision to repair or replace any parts of the instrument will be made by AB on the basis of which approach will provide the customer with the best service. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of AB.
4. AB will use reasonable efforts under the circumstances to provide services as quickly as possible. The service will be scheduled at a time mutually agreed upon by AB and the customer.
5. AB warrants that it will provide its services at least in accordance with generally accepted standards prevailing in the instrument repair industry, or instrument training industry with respect to training services, at the time and place performed. Warranty claims must be made within ninety (90) days after services are performed. **AB MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. AB'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT AB OPTION. THESE ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**
6. Service Plans do not cover replacement of parts, costs, repairs or adjustments for defects resulting from or necessitated by acts of nature, damage not caused by AB, accident, neglect, carelessness, misuse, including without limitation: operation with incompatible solvents or samples in the system; operation outside of the environmental or use specifications or not in conformance with the instructions for the instrument system, software, or accessories; improper or inadequate maintenance by the user; installation of software or interfacing, or use in combination with software or products, not supplied or authorized by AB; or modification, repair, service transfer to another location of the instrument made by the customer, customer's employees, agents or an unauthorized contractor, or intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations. Service Plans also do not cover repair or replacement of parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances.
7. Service Plans do not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications). Service Plans also do not cover replacement of parts, costs, repairs or adjustments due to Year 2000 non compliance.
8. Payment terms are net 30 days from date of AB's invoice to customer. If payment is not received by the due date, AB may assess and customer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency and /or attorney to collect unpaid amounts, AB may invoice customer for, and customer will pay, all costs of collection, including without limitation reasonable attorneys fees.
9. AB may accept or reject at its discretion a purchase order for Service or a Service Plan. Unless otherwise expressly stated by AB in writing or under the terms of the purchased Service Plan, the initial term of a Service Plan and this Agreement is one year, commencing on the date designated by AB in its quotation or otherwise specified to customer. A Service Plan may be terminated by either party 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"). Termination cannot be made effective prior to thirty (30) days after notice is received, provided, however, that AB may terminate a Service Plan immediately in the event that the instrument covered by the Service Plan is transferred to another location. AB will cease Service under this Agreement and underlying Service Plan on the Termination Date unless the customer specifies a separate, earlier date in writing ("Cessation Date"). In that event, AB will cease Service under this Agreement and underlying Service Plan on such Cessation Date.
10. In the event of termination of a Service Plan under Section 9, if the termination is by customer, AB shall calculate at its sole discretion 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 Termination Date. Customer's total payment obligation to AB under this Agreement shall equal (1) the amount so calculated or (2) the prorated price of the underlying Service Plan from its effective date until the Termination Date, whichever is greater, plus fifteen percent (15%) of the total fee paid for the underlying Service Plan, not to exceed the total amount paid. Any payments made by customer to AB in excess of this amount shall be credited to customer's account within thirty (30) days after the Termination Date toward future purchases of AB instruments, consumables or Service Plans. Any unpaid portion of this amount shall be immediately due upon customer's receipt of an invoice from AB. If the termination is by AB, other than for cause, AB will credit the customer with or refund to customer one hundred percent (100%) of the fee paid by customer for the underlying Service Plan, provided that if the underlying Service Plan is for a period of more than one year, AB will refund to customer the amount paid by the customer for all periods after the most recent anniversary date of the Service Plan. If a Service Plan is terminated early in connection with the trade in of a used AB instrument for a new AB instrument, the credit may be applied toward purchase of a Service Plan for the new instrument. Contact your AB service representative for details. No cash refunds will be made on account of the early termination of any Service Plan or other agreement for services.
11. AB will indemnify and hold customer harmless from and against any and all claims for injury or death of persons, or damage to tangible property, occurring while AB personnel are on customer's premises performing services under a Service Plan to the extent caused by the negligent acts or negligent omissions of AB, provided AB is given prompt notice of any such claim and the opportunity to control the defense and settlement of same.
12. **TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL AB BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT,**

INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR FAILURE TO PERFORM SERVICES OR OTHERWISE, EVEN IF AB IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL AB BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT OR PRODUCT ERROR OR THE FAILURE OF AN INSTRUMENT OR OTHER PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER AB'S INDEMNITY SET FORTH IN SECTION 11, AB'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS SERVICE AGREEMENT AND ANY UNDERLYING SERVICE PLAN, INCLUDING WITHOUT LIMITATION SERVICES RENDERED THEREUNDER, OR BREACH THEREOF OF FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO AB FOR THE UNDERLYING SERVICE PLAN.

13. Parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by any Service Plan, including, but not limited to seals, filters, gaskets, etc.
14. Use of any non-AB's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by AB to have caused instrument failure will require remedial repairs of the effected parts to be completed outside a Service Plan at AB's then prevailing rates for billable service.
15. Ancillary equipment not manufactured by AB, such as third party computers, may be excluded from any Service Plan, at AB's discretion. AB will pass on to customer any manufacturer's warranty of any such ancillary equipment, to the extent permitted by the manufacturer.
16. AB makes no representation whatsoever that services provided by AB satisfy or will satisfy any requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization. Customer agrees that it is customer's responsibility to ensure that such services are adequate to meet its regulation/certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization are the responsibility of customer.
17. Neither this Service Agreement nor any Service Plan is assignable or otherwise transferable by customer. Any assignment or transfer or attempt to assign or to transfer by customer shall be void.
18. AB may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable safe and secure location reasonably determined by AB, 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 AB personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to AB and AB's written consent.
19. Service Plans do not include customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by AB in any particular case.
20. Neither party shall be liable for delays in performance or nonperformance in whole or in part, or for loss, injury, delay, expenses, damages or other casualty suffered or incurred on account of or due to, any causes that are beyond its reasonable control, such as, without limiting the generality of the foregoing, acts of God, fires, strikes, trade disputes, riots, embargos, earthquakes, storms, acts of the government, power losses or shortages, or inability to obtain parts or supplies, provided that the foregoing shall not apply to any obligation to pay money due.
21. These Service Agreement Terms and Conditions, together with AB's quotation regarding the Service Plan(s) or other services subject to these terms and conditions, and AB's description of the services provided under the Service Plan purchased by customer (collectively, "AB's Terms"), represents the entire agreement between the parties with respect to the subject matter herein and supersedes and entirely replaces (i) any previous agreements between the parties with respect to the subject matter herein and (ii) any pre-printed, standard or other terms (except for the statement of Services or Service Plan selected and, if accurate, price) set forth in customer's purchase order (if accepted by AB) or any other document not signed by an authorized representative of AB and agreed to by AB, which are hereby rejected and shall be void. Customer's submission of a purchase order or other instrument regarding the purchase of Services in response to AB's quotation or any other AB document that includes or incorporates these terms shall be deemed acceptance of these terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in such purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of customer is expressly conditioned on customer's assent to and acceptance of AB's Terms to the extent they are additional or different terms. Except as otherwise provided in these terms, in the event of an inconsistency between these terms and the terms appearing on AB's quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these terms, and all other provisions of these terms shall remain in full force and effect.
22. No amendment of these terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and customer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these terms for any other purpose. If any provision of these terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or unenforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect. Nothing in this Agreement shall be deemed or construed as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise by AB, or to limit AB's rights to enforce its patent or other intellectual property rights. No additions or modifications to this Service Agreement shall be valid unless specifically agreed to in writing by both parties. This Service Agreement and any underlying Service Plan shall be governed by the laws of the State of California, exclusive of its conflict of laws rules.