



Affymetrix Instrument Service Terms and Conditions

1. **General.** This agreement ("Service Agreement") is made and entered into by and between Affymetrix, Inc. ("AFX") and the customer ("Customer") identified on the related purchase order for the provision of the services described on the related AFX quote pertaining to AFX instruments, probe arrays, applications, software, and/or services which have been sold or leased by AFX to Customer (the "Instrument(s)"), and any AFX software installed on the workstation, which software is owned and licensed by AFX to Customer (the "Applications"). Any part or subassembly of an Instrument that is sold or provided to Customer by AFX shall be deemed "Covered Parts." The Applications and Instruments are collectively referred to herein as the "System."
 2. **Services.** During the Term of this Service Agreement, as defined on the related quote, and in exchange for Customers payment of the agreed to fee, AFX shall provide to Customer the services (the "Covered Services") as stated on the related quote, which can include:
 - a. **Repair.** AFX or its designee shall perform all necessary repair service and standard preventative maintenance of the equipment 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 AFX) that such error or malfunction substantially interferes with Customer's normal use of the Instrument. All labor, travel and parts are included. Replaced products, components or subassemblies will be new or like new of equal performance. All AFX instruments require a consistent and reliable power source in order to perform optimally. A dedicated circuit is recommended. AFX 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 AFX during normal business hours 8 -5 Monday – Friday, excluding holidays. On-Site support will be provided during normal business hours as well with a response of 2 business days or less, when determined an on-site visit is needed.
 - c. **Software Revisions.** AFX will provide or install, at AFX' 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 agreed to Service Agreement.
 - d. **Service Limitations.** Customer agrees to follow the operation procedures published by AFX, including procedures for routine maintenance. AFX 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 AFX;
 - (iv) Unapproved Relocation 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 AFX; or
 - (vii) The use of any equipment, software, or peripherals which are not part of the Instrument or System.
 - (viii) Limited – Life parts are covered for thirty (30) days from installation, unless otherwise stated on the quote. These will be identified on the related AFX quote.
 - (ix) Any consumables like but not limited to tubing or anything else stated on the related AFX quote
- Customer shall reimburse AFX at the then-current service call fees, including all labor, parts and travel charges, for all work of AFX or its designee incurred in investigating any failure or malfunction that AFX reasonably determines to not be part of the Covered Services.
3. **Installation Services.** When this Service Agreement is entered into concurrently with the initial purchase, lease or license of the System, and upon Customer's request, AFX or its designee may provide on-site installation assistance for the System and such other services as AFX reasonably determines are necessary to permit Customer to begin use of the System. Customer shall promptly perform all tasks reasonably requested by AFX or its designee in connection with such installation and site preparation.
 4. **Limitations.** Any and all instruments, software, other products, or any parts or subassemblies of the foregoing that are not provided by AFX or its designee shall be deemed "Non-Covered Equipment." AFX shall have no obligations with respect to Non-Covered Equipment; moreover, and notwithstanding anything herein to the contrary, AFX shall have no obligation to provide Covered Services in connection with any Instruments non Covered Parts:
 - (a) that have been substantially altered by Customer, including any serial numbers or other identifying markings;
 - (b) that do not incorporate all of AFX' engineering improvements or other fixes that AFX 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 AFX' 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;
 - (e) That have been repaired or maintained by anyone other than AFX or its designee, except such routine operational maintenance as set forth in the product operation, installation or maintenance manuals provided with the Instrument.
 5. **Access and Service Safety.** Customer will provide AFX and its designee's reasonable and safe access to all Instruments and Systems for the provision of any services and for any audit of compliance with AFX installation and operational guidelines. If environmental or operational contamination creates a hazard for AFX personnel, AFX 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 AFX. Any AFX services that AFX may provide in connection with the activities contemplated by this paragraph shall be deemed to not be Covered Services, and Customer shall reimburse AFX at AFX' then-current service call fees, including all labor, parts and zone charges, for all such work of AFX or its designee.
 6. **Relocation of Covered Equipment.** If any Instrument is moved from its installation position, AFX may, at its discretion, determine that such Instrument has been relocated (a "Relocation"). Relocation of Instruments may result in service charges as follows:
 - (a) **Approved Relocation.** Relocation of Instruments by AFX or its designees is permitted. Instruments may be moved with the assistance of AFX at AFX' service call fees, including all labor, parts and travel charges. With prior written approval of AFX, Customer may move specified Instruments without incurring any charges. Customer will contact AFX prior to moving any Instrument.
 - (b) **Unapproved Relocation.** Any Service Agreement or warranty covering an Instrument shall be rendered void and unenforceable by Relocation of such Instrument without the prior written approval of AFX. At the discretion of AFX, upon completion of a maintenance inspection and service at AFX then current service call fees, including all labor, parts and travel charges, the subject Service Agreement or warranty may be reinstated.
 7. **Obsolete Products.** Covered Parts, Instruments or System that are no longer offered for sale or license by AFX ("Obsoluted Items") will be maintained and repaired on a reasonable efforts basis by AFX. If AFX determines in its discretion that support and service of such Obsolete Items is no longer reasonable, AFX shall notify Customer of such determination and such Obsoleted Item shall be deemed to not be a Covered Part, Instrument or System.
 8. **Billable Services.** All services performed by AFX on Customer's Non-Covered Equipment or which are not Covered Services (collectively, "Billable Services") shall be billable to Customer at AFX' then-current service call fees, including all labor, parts and travel charges.
 9. **Ownership.** All replaced parts removed from the System in connection with any services shall become the property of AFX upon their replacement. Any and all modifications to the Instrument or System, including all intellectual property rights associated therewith, made or provided by AFX pursuant to the Service Agreement, whether alone or with any contribution from Customer or its employees, agents or contractors, shall be owned exclusively by AFX. 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 AFX. Customer shall maintain and enforce agreements and policies with its employees, agents and contractors sufficient to give effect to the provisions of this Paragraph.
 10. **Limited Warranty.** AFX warrants that it will render the services hereunder in a good and workmanlike manner. As AFX sole responsibility and Customer's exclusive remedy in the event of any material failure to meet such standard, AFX shall make a reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted in writing in accordance with AFX' standard procedures within thirty (30) days after delivery or the date of the required delivery of the pertinent 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 AFX of its obligations with respect to the subject of such remedy. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, AFX MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE SERVICES. AFX 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 AFX (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 hereunder allocable to the services that give rise to the claim, up to a maximum of twelve (12) months for the services at issue. In no event shall AFX 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 AFX has been advised of the possibility of such damages.
 12. **Term.** The term ("Term") of this Service Agreement shall commence on the date AFX receives an authorized purchase order from Customer, and continue as specified in AFX or its representative's Sales Quote describing this Service Agreement, if no such term is specified, the Term shall be one year.
 13. **Termination.** AFX may terminate this Service 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 Service Agreement or any other agreement between AFX and Customer;
 - (b) Customer fails to make any payments to AFX within (30)days of its due date;
 - (c) Customer ceases doing business;
 - (d) Customer is the subject of any bankruptcy, insolvency, or similar proceeding, becomes insolvent, makes an assignment for the benefit of creditors, or is unable to pay its debts when due, or 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; or
 - (e) Customer suffers a materially adverse change in its financial condition or operations.
 No termination of this Service Agreement shall release Customer from any obligation to pay AFX any amount that has accrued or become payable at or prior to the date of termination. In no event (including early termination) shall AFX be obligated to return any payments received by AFX hereunder.
 14. **Delays.** The time within which AFX obligations are required to be fulfilled hereunder will be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from causes beyond AFX 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.
 15. **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 AFX prompt notice of any address change.
 16. **Miscellaneous.**
 - (a) A failure by either party to enforce any right under this Service 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 Service Agreement.
 - (b) This Service Agreement shall obligate and benefit the parties and their respective successors and assigns, provided that no assignment or transfer of any interest in this Service Agreement (including sublicense, hypothecation, security interests, and the like) may be made by Customer without the prior written consent of AFX.
 - (c) The invalidity of enforceability of any provision of this Service 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) This Service 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.
 - (e) Each party shall act solely as an independent contractor with respect to the other party, and nothing in this Service Agreement shall be construed to give either party the power or authority to act for, bind or commit the other party.
 - (f) This Service 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 Service Agreement shall be effective unless made in writing and signed by AFX and Customer. Accordingly, no sales person or field representative of AFX shall be authorized to act or make any commitment for AFX. 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