



## Data Sheet

# Affymetrix® Basic Software Maintenance Agreement

The Affymetrix® Basic Software Maintenance Agreement provides one year of free software updates/upgrades and unlimited telephone support.

### Agreement Features

- **Length of contract: 12 months**
- **Period of coverage: Monday – Friday, 8 a.m. – 5 p.m., excluding holidays**
- **Unlimited telephone support**
- **Unlimited e-mail support**
- **Telephone or e-mail response within eight business hours**
- **Unlimited Affymetrix Internet support via Technical Support web site**

### • Error correction

–If any errors in the software should occur, Affymetrix will use reasonable commercial efforts to correct, repair, or replace the software.

### • All covered Affymetrix software updates and upgrades, as released

### Ordering Information

Affymetrix® Basic Software Maintenance Agreement

For more information, please contact your Affymetrix Representative.

#### AFFYMETRIX, INC.

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[www.affymetrix.com](http://www.affymetrix.com) Please visit our web site for international distributor contact information.

For research use only. Not for use in diagnostic procedures.



## Affymetrix, Inc. Software Maintenance Terms and Conditions

**1. General.** This agreement (the "Software Maintenance Agreement") constitutes an offer by Affymetrix, Inc. ("Affymetrix") to provide to the customer ("Customer") identified on the related sales quote ("Sales Quote") certain services described herein relating to the GeneChip/LIMS software identified on the Sales Quote (the "SOFTWARE"). The Software Maintenance Agreement shall be effective as of the date Customer first receives the SOFTWARE (the "Effective Date"). If Customer's service order is deemed an offer, Affymetrix' acceptance is expressly conditional on Customer's acceptance of these terms (except non-preprinted quantity, price, payment and license restriction terms in the Sales Quote); if these terms are considered an offer by Affymetrix, Customer's acceptance is expressly limited to these terms. Any additional or different terms or conditions proposed by Customer shall not become part of this Agreement. To the extent that a purchase order or other form is used by Customer for accounting convenience, Affymetrix objects to any proposed changes. Subject to the terms hereof, Affymetrix will provide Support Services to Customer for the number of copies of SOFTWARE for which Support Services are indicated on the Sales Quote and any related sales quote(s).

**2. Support Services.** Support Services consist of (a) Error Correction and Telephone Support provided to the Technical Support Contact concerning the installation and use of the then-current release of SOFTWARE and the Previous Sequential Release thereof and (b) Product Updates/Upgrades that Affymetrix in its sole discretion makes generally available. Notwithstanding the foregoing, nothing herein shall be construed as a guarantee that Affymetrix will release Product Updates/Upgrades during the term, or any renewal term, of this Software Maintenance Agreement.

A "Product Upgrade" is a new software product that contains enhancements to the SOFTWARE. Affymetrix shall advise Customer of recent Product Upgrades. "Upgrades" are covered by the Annual Maintenance Fee.

All Product Updates and Upgrades provided to Customer hereunder shall be governed by the terms of the applicable license agreement(s) (including without limitation the Server Software License Agreement and/or End-User License Agreement) relating to the SOFTWARE (collectively, the "License Agreement"). Upon installation of Product Updates or Upgrades, all prior versions or releases thereof shall be destroyed by Customer. Upon written request from Affymetrix, Customer shall certify in writing the destruction of all such prior versions in accordance with this section.

Customer shall pay Affymetrix, at Affymetrix' then-current standard consulting rates plus related expenses incurred therewith, for all additional services requested by the Customer and rendered by Affymetrix hereunder, including without limitation re-installation of any SOFTWARE as a result of hardware or software upgrades.

**3. Term and Termination.** Support Services shall be provided for one (1) year from the Effective Date. For each year that Customer pays the Annual Maintenance Fee on or before the anniversary Date, Support Services shall be extended for one (1) year from such Effective Date, unless terminated by either party as provided herein or unless the License in the License Agreement terminates, in which case Support Services will terminate concurrently with termination of the License.

Affymetrix may suspend or cancel Support Services if Customer breaches either the License Agreement or Section 4 below or any other material provision of the Software Maintenance Agreement and such breach is not remedied within thirty (30) days (or thirty (30) days in the case of nonpayment) after Customer receives notice of the breach.

Sections 4, 5 (only the last two paragraphs), 6, 7, and 9 shall survive termination of this Agreement.

**4. Fees and Payment.** Customer shall pay Affymetrix the Annual Maintenance Fee for the initial term, and each renewal term, of the Software Maintenance Agreement. Annual Maintenance Fees will be billed on an annual basis and payable in advance. Overdue payment of any such fee shall bear interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed under applicable law.

If Customer elects to obtain Support Services, Support Services must be purchased to cover all copies of the applicable SOFTWARE. If Customer fails to purchase/renew maintenance for the Software, or if such maintenance is terminated pursuant to the terms of this Agreement, Customer may continue to use such Software pursuant to the License Agreement but will not be entitled to receive maintenance services for such Software. To reinstate such services, Customer must pay all maintenance fees on a cumulative basis for periods during which Customer did not purchase coverage. Customer shall be responsible for all taxes associated with Support Services other than U.S. taxes based on Affymetrix' net income. Each payment by Customer is due within thirty (30) days from receipt of the applicable Affymetrix invoice, unless otherwise stated on the invoice.

If any payment is not made within one hundred and eighty (180) days of the applicable due date, Support Services will be Terminated.

**5. Error Correction.** Affymetrix will exercise commercially reasonable efforts to correct any Error reported by Customer in the then-current, unmodified release of SOFTWARE in accordance with the priority level reasonably assigned to such Error by Affymetrix, and agreed to by both parties.

(a) **Priority A Errors.** Affymetrix shall promptly commence the following procedures:

- (i) assign Affymetrix engineers to correct the Error;
- (ii) notify Affymetrix management that such Errors have been reported and of steps being taken to correct such Error(s);
- (iii) provide Customer with periodic reports on the status of the corrections; and
- (iv) initiate work to provide Customer with a Workaround or Fix.

(b) **Priority B Errors.** Affymetrix shall exercise commercially reasonable efforts to include the Fix for the Error in the next regular SOFTWARE maintenance release.

(c) **Priority C Errors.** Affymetrix may include the Fix for the Error in a subsequent major release of the SOFTWARE.

If Affymetrix believes that a problem reported by Customer may not be due to an Error in the SOFTWARE, Affymetrix will so notify Customer. At that time, Customer may (1) instruct Affymetrix to proceed with problem determination at its possible expense as set forth below, or (2) instruct Affymetrix that Customer does not wish the problem pursued at its possible expense.

If Customer requests that Affymetrix proceed with problem determination at its possible expense and the error was not due to an Error in the SOFTWARE, Customer shall pay Affymetrix, at Affymetrix' then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. If Customer instructs Affymetrix that it does not wish the problem pursued at its possible expense or if such determination requires effort by Affymetrix in excess of Customer's instructions, Affymetrix may, at its sole discretion, elect not to investigate the problem with no liability therefor.

Customer shall not be liable for (i) problem determination or repair to the extent problems are due to Errors in the SOFTWARE, (ii) work performed under this paragraph in excess of its instructions or (iii) work performed after Customer has notified Affymetrix that it no longer wishes work on the problem determination to be continued at its possible expense (such notice shall be deemed given when actually received by Affymetrix).

**6. Exclusions.** Under this Agreement Affymetrix shall have no obligation to support:

- (a) Any Computer related hardware, unless stated otherwise on the Sales Quote.
- (b) Any On-Site support, unless stated otherwise on the Sales Quote.
- (c) SOFTWARE that is altered, damaged or modified, except by Affymetrix, or any portion of the SOFTWARE incorporated with or into other software.
- (d) SOFTWARE that is not the then-current release or immediately Previous Sequential Release;
- (e) SOFTWARE problems caused by Customer's use of SOFTWARE other than as specified in the Affymetrix' user manual or Documentation.
- (f) SOFTWARE installed on any computer hardware that is not supported by Affymetrix or any computer or workstation not strictly complying with specifications listed in Documentation; or Software for which a license under the License Agreement has not been obtained or applicable fees pursuant to such License Agreement have not been paid for any copy of Software.

Affymetrix shall have no liability for any changes in Customer's hardware which may be necessary to use SOFTWARE due to a Workaround or maintenance release.

**7. Limitation of Liability.** EXCEPT FOR BODILY INJURY OF A PERSON, AFFYMETRIX' LIABILITY FOR DAMAGES FROM ANY CAUSE OF ACTION WHATSOEVER RELATING TO AFFYMETRIX' AGREEMENT TO PROVIDE SUPPORT SERVICES SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE SUPPORT SERVICES FOR THE APPLICABLE YEAR. AFFYMETRIX' LIABILITY SHALL BE FURTHER LIMITED AS PROVIDED IN THE LICENSE AGREEMENT.

**8. Definitions.**

- (a) "Annual Maintenance Fee" shall be as set forth in the Sales Quote.
- (b) "Documentation" shall mean the manual(s) relating to the use of the SOFTWARE delivered by Affymetrix to Customer.
- (c) "Error" means an error/bug in the SOFTWARE which significantly degrades the SOFTWARE performance or customer's use of the SOFTWARE.
- (d) "Error Correction" means the use of reasonable commercial efforts to correct errors.
- (e) "Fix" means the repair or replacement of object or executable code versions of SOFTWARE to remedy an Error.
- (f) "Previous Sequential Release" means at any time the version or release of SOFTWARE which has been replaced by the then-current version or release of such SOFTWARE. Notwithstanding anything to the contrary herein, a Previous Sequential Release will be supported by Affymetrix only for a period of six (6) months after release of the then-current version or release.
- (g) "Priority A Error" means an Error which renders SOFTWARE inoperative or causes the SOFTWARE to fail catastrophically.
- (h) "Priority B Error" means an Error which does not substantially degrade the performance of SOFTWARE or materially restricts Customer's use of the SOFTWARE.
- (i) "Priority C Error" means an Error which causes only a minor impact on the performance of SOFTWARE or Customer's use of SOFTWARE.
- (j) "Support Services" or "Maintenance" means Affymetrix' support services as described in Section 2.
- (k) "Telephone Support" means technical assistance provided by Affymetrix to the Technical Support Contact during normal business hours concerning the installation and use of the then-current release of SOFTWARE and the Previous Sequential Release.
- (l) "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of SOFTWARE.

**9. Miscellaneous.** THESE TERMS AND CONDITIONS CONSTITUTE A SERVICE AGREEMENT AND NOT A PRODUCT WARRANTY. THE SOFTWARE AND ALL MATERIALS RELATED TO THE SOFTWARE ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE LICENSE AGREEMENT. THIS SOFTWARE MAINTENANCE AGREEMENT SHALL NOT CHANGE OR SUPERSEDE ANY TERM OF THE LICENSE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.