



Terms and Conditions of Sale

1. Definitions

- a. **“Agreement”** means these terms and conditions of sale, the Service Contract and the Quotation.
- b. **“Consumable(s)”** means Seller branded reagents and consumable items that are intended by Seller to be consumed through the use of Hardware.
- c. **“Covered Hardware”** means those portions of the Hardware that are covered by a Service Level purchased by Purchaser hereunder.
- d. **“Documentation”** means Seller’s user manual, package insert, and similar technical documentation, for the Product in effect on the date that the Product ships from Seller. Documentation may be provided with the Product at time of shipment or provided electronically from Seller.
- e. **“Hardware”** means Seller branded instruments, accessories, or peripherals.
- f. **“Product(s)”** means the item(s) acquired hereunder. Products may be Hardware, Consumables, or Software. Software may be embedded in or installed on Hardware or provided separately.
- g. **“Purchaser”** means the person or entity acquiring the Product with the intent to use the Product, from (i) Seller or (ii) Seller’s authorized distributor or reseller.
- h. **“Seller”** means the Verogen, Inc. entity selling the Product. The Seller is identified on the quotation, order acknowledgment or similar communication, or Seller website if the order is being placed electronically at Seller’s website.
- i. **“Service Contract”** means the level of support and services selected by Purchaser as set forth in Addendum A.
- j. **“Site”** means the smallest definable room that contains the Covered Hardware.
- k. **“Software”** means Seller branded software made available on the Hardware acquired hereunder (e.g., Hardware operating software and related installers).
- l. **“Specifications”** means Seller’s written technical specifications for the Product in effect on the date that the Product ships from Seller.
- m. **“Term”** means the term of the Service Contract as set forth in this Agreement.

2. Rights to Products upon Purchase

Subject to these terms and conditions, Purchaser is granted only a non-exclusive, non-transferable, personal, non-sublicensable right under Seller’s intellectual property rights to use the Product in Purchaser’s facility in accordance with the Product’s Specifications and Documentation. Additionally, Purchaser is granted a non-exclusive, non-transferable, personal, non-sublicensable right under Seller’s intellectual property rights to install and use Software made available by Seller with the Product, solely in accordance with the Product’s Specifications and Documentation. This license will terminate upon Purchaser’s failure to comply with these terms and conditions, or by Purchaser discontinuing use of the Software and destroying or removing all copies thereof. All Software, whether provided separately, installed on, or embedded in a Product, is licensed to Purchaser, not sold. Except as expressly stated in this Section no right or license under any intellectual property rights of Seller or Seller’s affiliates is or are granted, expressly, by implication, or by estoppel, to Purchaser, and any such rights are expressly reserved to Seller and its affiliates. Purchaser agrees that the contents of and methods of operation of the Product are proprietary to Seller and the Product contains or embodies trade secrets of Seller.

3. Product Restrictions

The conditions and restrictions found in these terms and conditions are bargained for conditions of sale and therefore control the sale of and use of the Products by Purchaser.

- a. **Unauthorized Uses of Products.** Purchaser agrees: (i) to only use the Product in accordance with the Product’s Documentation and Specifications, (ii) to use each Consumable only one time, and (iii) to use only Seller Consumables with Seller Hardware. The limitations in (ii)-(iii) do not apply if the Documentation or Specifications for the Product expressly state otherwise.



- b. **Excluded Uses.** Purchaser shall not use the Product in (i) clinical testing which results are provided to a patient or provider and (ii) use of in-vitro diagnostics.
- c. **Unauthorized Transfer of Products.** Licenses to the Software are not transferable. Purchaser agrees to not sell, rent, lease, loan, transfer or assign or otherwise dispose of any Hardware or component thereof containing Software to any third party unless Purchaser first erases or removes the Software.
- d. **Software License Restrictions.** Purchaser acknowledges that certain Software may be subject to additional terms and conditions. Purchaser may not use, copy, modify, create derivative works of, reverse engineer, decompile, disassemble, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare or otherwise transfer the Software, nor permit any other party to do any of the foregoing. Purchaser may not remove from the Software, or alter, any of the trademarks, trade names, logos, patent or copyright notices or markings, or add any other notices or markings to the Software. Purchaser may not (and may not attempt to) defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any protection mechanisms in the Software including without limitation any such mechanism used to restrict or control the functionality of the Software.
- e. **Consumables Return.** Upon delivery to Purchaser, all Consumables shall be non-returnable and all amounts paid or payable for such Consumables shall be non-refundable.
- f. **Third Party Code.** Purchaser acknowledges that certain Software may be subject to additional terms and conditions. To the extent third party code is included in Software and any term or condition of a third party license applicable to such third party code directly conflicts with the terms and conditions set forth herein, the applicable term(s) or condition(s) of that third party license will be applicable only to that third party code and only to the extent necessary to remove the conflict.

4. **Regulatory**

The Product is labeled with a For Research Use Only or similar labeling statement and is not for use in diagnostic procedures. Purchaser acknowledges that (i) the Product has not been approved, cleared, or licensed by the United States Food and Drug Administration or any other regulatory entity whether foreign or domestic for any specific intended use, whether research, commercial, diagnostic, or otherwise, and (ii) Purchaser must ensure it has any regulatory approvals that are necessary for Purchaser's intended uses of the Product. Purchaser further agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of Product.

5. **Limited Liability**

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER, ITS LICENSORS OR ITS SUPPLIERS BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR (I) COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OF THE PRODUCT, ITS USE, SELLER'S PERFORMANCE OR ANY OF THESE TERMS AND CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE); OR (II) AMOUNTS THAT, IN THE AGGREGATE, EXCEED THE AMOUNT PAID TO SELLER FOR THE PARTICULAR PRODUCT CONTAINED IN THE PARTICULAR ORDER THAT DIRECTLY CAUSED THE LIABILITY.

6. **Limitations on Warranties**

TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS PRODUCT WARRANTY MADE IN THESE TERMS AND CONDITIONS SELLER MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCT, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS OR UTILITY FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

7. **Product Warranty**

All warranties are personal to the Purchaser and may not be transferred or assigned to a third-party, including an affiliate of Purchaser. All warranties are facility specific and do not transfer if the Product is moved to another facility of Purchaser, unless Seller conducts such move. The warranties described in these terms and conditions exclude any stand-alone third party goods that may be acquired or used with the Products.



- a. **Warranty for Consumables.** Seller warrants that Consumables, other than custom Consumables, will conform to their Specifications until the later of (i) 3 months from the date of shipment from Seller, or (ii) any expiration date or the end of the shelf-life pre-printed on such Consumable by Seller, but in either event, no later than 12 months from the date of shipment. With respect to custom Consumables (i.e., Consumables made to specifications or designs made by Purchaser or provided to Seller by, or on behalf of, Purchaser), Seller only warrants that the custom Consumables will be made and tested in accordance with Seller's standard manufacturing and quality control processes. Seller makes no warranty that custom Consumables will work as intended by Purchaser or for Purchaser's intended uses.
- b. **Warranty for Hardware.** Seller warrants that Hardware, other than Upgraded Components, will conform to its Specifications for a period of 12 months after its shipment date from Seller unless the Hardware includes Seller provided installation in which case the warranty period begins on the date of installation or 30 days after the date the Hardware was delivered, whichever occurs first ("**Base Hardware Warranty**"). "**Upgraded Components**" means Seller provided components, modifications, or enhancements to Hardware provided pursuant to the Base Hardware Warranty. Seller warrants that Upgraded Components will conform to their Specifications for a period of 90 days from the date the Upgraded Components are provided by Seller. Upgraded Components do not extend the Base Hardware Warranty unless the upgrade was conducted by Seller at Seller's facilities in which case the upgraded Hardware shipped to Purchaser comes with a new Base Hardware Warranty.
- c. **Exclusions from Warranty Coverage.** The foregoing warranties do not apply to the extent a non-conformance is due to (i) abuse, misuse, neglect, negligence, accident, improper storage, or use contrary to the Documentation or Specifications, (ii) improper handling, installation, maintenance, or repair (other than if performed by Seller's personnel), (iii) unauthorized alterations, (iv) Force Majeure events, or (v) use with a third party's good.
- d. **Procedure for Warranty Coverage.** In order to be eligible for repair or replacement under this warranty Purchaser must (i) promptly contact Seller's support department to report the non-conformance, (ii) cooperate with Seller in confirming or diagnosing the non-conformance, and (iii) return the Product, transportation charges prepaid to Seller following Seller's instructions or, if agreed by Seller and Purchaser, grant Seller's authorized repair personnel access to the Product in order to confirm the non-conformance and make repairs.
- e. **Sole Remedy under Warranty.** Seller will, at its option, repair or replace non-conforming Product that is covered by this warranty, provided that Seller can reasonably identify and confirm such nonconformance. The warranty period for repaired or replaced Consumables is 90 days from the date of shipment, or the remaining period on the original Consumables warranty, whichever is later. Hardware may be repaired or replaced with functionally equivalent, reconditioned, or new Hardware or components (if only a component of Hardware is non-conforming). If the Hardware is replaced in its entirety, the warranty period for the replacement is 90 days from the date of shipment or the remaining period on the original Hardware warranty, whichever is later. If only a component is being repaired or replaced, the warranty period for such component is 90 days from the date of shipment or the remaining period on the original Hardware warranty, whichever ends later. The preceding states Purchaser's sole remedy and Seller's sole obligations under the warranty.

8. **Service Contract**

- a. **Term.** All Service Contracts shall be effective, unless otherwise terminated as provided herein, for a period of 12 months from the effective date of this Agreement, unless otherwise agreed to by the Seller, or unless otherwise set forth in Addendum A.
- b. **Support Obligations.**
 - (i) **Response Time and On-site Support.** All requests for service must be made directly through Seller's Service and Support channels (by phone, email, or customer portal). Seller reserves the right to provide service and support by any method, including but not limited to telephone, Internet or email, providing loaner equipment while repairs are being made, and deploying service or applications personnel on-site, or contracting for third-party support to do any of the foregoing. Seller shall respond to Purchaser's request for support in accordance with the average response time specified in the Service Contract. Purchaser shall make reasonable accommodations to provide support personnel with access to site and equipment. Other than installation and preventative maintenance visits as prescribed in Service Contract, Seller shall determine whether and when any personnel or replacement parts or equipment are to be sent to Purchaser's site



(ii) Software Support. During the Term, Seller shall use commercially reasonable efforts to provide critical Software updates in accordance with the terms of the Service Contract. Purchaser's use of all Software, updates, and upgrades of Software shall be subject to the license and restrictions set forth in the Terms and Conditions of Sale executed by Purchaser.

(iii) Hardware Support. During the Term, Seller shall use commercially reasonable efforts to repair Hardware as deemed necessary by Seller's service and support personnel. Seller shall provide replacement parts and labor according to the terms of the Service Contract. Seller will retain the removed or exchanged parts. Repaired or replaced items are warranted to conform to the Specifications for 90 days from the date of installation or repair of such repaired or replaced item.

(iv) Documentation Updates. During the Term, Seller shall use commercially reasonable efforts to provide updates to Documentation. Updates to Documentation may be distributed electronically in the form of release notes at the discretion of the Seller.

(v) Preventative Maintenance Visits. During the Term, Seller will use commercially reasonable efforts to provide preventative maintenance on-site according to the terms of the Service Contract, which may result in one or more days of system down time. Seller shall cooperate with Purchaser to schedule such preventative maintenance visits at a time that is mutually convenient for both parties. All such preventative maintenance services will be provided by Seller designated service and support personnel (which may include subcontractors). All travel, labor and parts/materials expenses associated with prescribed preventative maintenance visits, visits to service, repair or replace covered items, and applications support visits as provided for in the Service Contract are included in the price set forth for such Service Contract. Seller shall not be liable for any types, or amounts, of damages or losses of any kind resulting from the down time during such preventative maintenance visits.

c. Purchaser Responsibilities.

(i) Proper Use. The performance of Covered Hardware when operated in conditions outside of the Specifications included in Seller's site requirements guide is not guaranteed. Purchaser agrees to use the Hardware in a safe and reasonable manner as described by the Documentation.

(ii) Access. Purchaser will provide Seller with access to the Covered Hardware along with adequate working space and facilities within a reasonable distance of the Covered Hardware

(iii) Data Back-up and Security. Purchaser is responsible for maintaining a procedure to back up its data routinely, and to reconstruct any lost or altered files, data, or programs, as well as for the security of all confidential, proprietary, and classified information.

(iv) Networking. Purchaser is responsible for maintaining all computer networking as it relates to the integration of any components of the Covered Hardware outside of such system and within Purchaser's network.

(v) Toxic/BioHazardous Substances. Purchaser will perform all decontamination procedures required by Seller, and shall provide a completed Decontamination Certificate to Seller Service team before any service may be performed on the Hardware.

(vi) Environment. Purchaser agrees to provide Seller's designated service personnel with a safe environment for their work.

(vii) Disposal of Waste Products. Purchaser is responsible for the proper disposal of waste products that result from maintenance and service work on the Covered Hardware.

(viii) Facilities. Purchaser is responsible for ensuring that the Site will adhere to Seller's site requirements found in the Specifications.

d. Exclusions and Restrictions. The terms of this Agreement cover maintenance and repair for conditions that result from normal use and operation as described in the Specifications. Seller will not be obligated to perform maintenance or repair on any Covered Hardware which, in its reasonable judgment:



- (i) Has not been operated and maintained in accordance with its Specifications or has been damaged due to operators failing to perform standard operating procedures or routine maintenance as prescribed in the User Documentation;
- (ii) Has been subjected to misuse, negligence, accident, improper handling, or use contrary to any instructions issued by Seller or has been used in any manner inconsistent with its Specifications;
- (iii) Has been repaired, altered, or damaged as a result of modifications made to the Covered Hardware that were not authorized in writing by Seller;
- (iv) Has been damaged by environmental conditions at the Site;
- (v) Has been moved from the Site or from its installed location to another location within the Site by persons not expressly authorized in writing by Seller;
- (vi) Has been used with any third party software, hardware, or item including, without limitation, reagent which has not been previously approved in writing by Seller;
- (vii) Has been exposed to Bio-safety Level 3 or 4 agents (as defined by The Occupational Safety and Health Administration); or
- (viii) Has been exposed to radioactivity, and has not been decontaminated to below exempt levels.

- e. **Services by Third Parties on Seller's Behalf.** Seller reserves the right to contract with third party service vendors to provide service and support. In any instance where the terms and conditions of such vendor's service, support, and warranty agreement conflicts with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern; provided, however that any exclusions on coverage contained in an OEM vendor's terms and conditions shall remain in full force and effect.
- f. **Relocation of Covered Hardware.** If Purchaser requires relocation of Covered Hardware, relocation must be performed by Seller Service personnel or Seller designated Distributor Service Providers, at a labor rate determined by the Seller. If Purchaser moves the Covered Hardware without the knowledge and approval of the Seller the Service contract is terminated.
- g. **Recertification Requirement.** If the Service Contract or warranty term expires without purchase of a new term, Purchaser will only be eligible for a new Service Contract if Seller has inspected it and provided a written notice to Purchaser that the Hardware is eligible for a Service Contract ("Recertification Requirement"). Purchaser acknowledges that Covered Hardware may have to be repaired, at Purchaser's sole expense, prior to being eligible for a Service Contract. If Purchaser renews the Service Contract on a piece of Covered Hardware prior to the expiration of the Service Contract Seller will waive the Recertification Requirement.
- h. **Non-Transferable.** All Service Contracts are personal to the original Purchaser of the Covered Hardware and may not be transferred or assigned to any third party.

9. Indemnification

- a. **Indemnification by Seller.** Subject to these terms and conditions, including without limitation, the Exclusions to Seller's Indemnification Obligations (Section 8(b) below), the Conditions to Indemnification Obligations (Section 8(d) below), Seller shall (i) defend, indemnify and hold harmless Purchaser against any third-party claim or action alleging that the Product when used in accordance with these terms and conditions infringes the valid and enforceable intellectual property rights of a third party, and (ii) pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against Purchaser in connection with such infringement claim. This Section states the entire liability of Seller for any infringement of third party intellectual property rights.
- b. **Exclusions to Seller Indemnification Obligations.** For the avoidance of doubt, Seller has no obligation to defend, indemnify or hold harmless Purchaser for any infringement claim to the extent such infringement arises from: (i) use of the Product in any manner not in accordance with the rights expressly granted to Purchaser under these terms and conditions, (ii) use of the Product in combination with any third party products, materials, or services (unless the Product's Documentation or Specifications expressly state such third party's good is for use with the Product), (iii) use of the Product to perform any assay or other process



not supplied by Seller, (iv) Seller's compliance with specifications or instructions for such Product furnished by, or on behalf of, Purchaser, or (v) Purchaser's breach of any of these terms and conditions, (vi) use of stand-alone third party goods that may be acquired or used with the Products (each of (i) – (vi), is referred to as an **"Excluded Claim"**).

- c. **Indemnification by Purchaser.** Purchaser shall defend, indemnify and hold harmless Seller, its affiliates, their non-affiliate licensors, collaborators and development partners that contributed to the development of the Product, and their respective officers, directors, representatives and employees against any claims, liabilities, damages, fines, penalties, causes of action, and losses of any and every kind (including reasonable attorneys' fees), including without limitation, personal injury or death claims, and infringement of a third party's intellectual property rights, resulting from, relating to, or arising out of any Excluded Claim.
- d. **Conditions to Indemnification Obligations.** The parties' indemnification obligations are conditioned upon the party seeking indemnification (i) promptly notifying the other party in writing of such claim or action, (ii) giving the other party exclusive control and authority over the defense and settlement of such claim or action, (iii) not admitting infringement of any intellectual property right without prior written consent of the other party, (iv) not entering into any settlement or compromise of any such claim or action without the other party's prior written consent, and (v) providing reasonable assistance to the other party in the defense of the claim or action (at the indemnifying party's reasonable expense).

10. **Payment Terms**

Seller will invoice upon shipment. Subject to Seller's credit review of Purchaser (following which Seller shall inform Purchaser of applicable payment terms), all payments are due within 30 days of the date of the invoice except that payments in Japan are due within 60 days of the date of the invoice. All amounts due shall be paid in the currency found on the invoice. If payment is made by wire or other electronic funds transfer, Purchaser is solely responsible for any bank or other fees charged, and will reimburse Seller for any such fees. Purchaser shall pay for all costs (including reasonable attorneys' fees) incurred by Seller in connection with the collection of late payments. Each purchase order is a separate, independent transaction, and Purchaser has no right of set-off against other purchase orders or other transactions with Seller. Seller will determine payment terms on a per-order basis and may modify credit terms in its discretion. Any amounts not paid when due will accrue interest at the rate of 1.5% per month, or the maximum amount allowed by law, if lower.

11. **Shipping Terms: Title and Risk of Loss**

a. **North American Shipments:**

Unless otherwise set forth in writing by Seller or otherwise agreed between the parties, all shipments are made FOB Origin to the address designated by Purchaser at the time of ordering and Purchaser is responsible for freight and insurance which will be added to the invoice and paid by Purchaser. Title (except for Software and third-party software) and risk of loss transfers to Purchaser at point of shipment.

b. **International Shipments:**

Unless otherwise set forth in writing by Seller or otherwise agreed between the parties, all shipments are made DAP (Incoterms 2010) or if to member countries of the E.U. shipments are made DDP (Incoterms 2010) at the address designated by Purchaser at the time of ordering. Title (except for Software and third-party software) and risk of loss transfers to Purchaser when the shipment is made available at the address designated by the purchaser.

12. **Taxes**

Purchaser agrees that any applicable sales, use, excise, VAT (value added tax), GST (goods and services tax), withholding and other taxes will be calculated based on both the tax rates in effect on the date of shipment and the ship to address for the Product. Any amounts for tax listed on a quotation, if any, are for reference purposes only and are not binding on Seller. All prices and other amounts payable to Seller are exclusive of and are payable without deduction for any taxes, customs duties, tariffs or charges hereafter claimed or imposed by any governmental authority upon the sale of Product, all of which will be paid by Purchaser. In the event Seller is required by law or regulation to pay any such tax, duty or charge, such amount will be added to the purchase price or subsequently invoiced to the Purchaser. For Purchasers in New Zealand, Seller and Purchaser agree that subsection 8(4) Goods and Services Tax Act 1985, as may be amended, does not apply to the Products.

13. **General**



- a. **Applicability of Terms and Conditions.** These terms and conditions exclusively govern the ordering, purchase, supply, and use of Product, and override any conflicting, amending and/or additional terms contained in any purchase orders, invoices, or similar documents all of which are hereby rejected and are null and void. Seller's failure to object to any such terms shall not constitute a waiver by Seller, nor constitute acceptance by Seller of such terms and conditions. These terms and conditions represent the entire agreement between the parties regarding the subject matter hereof and supersede all prior discussions, communications, agreements, and understandings of any kind between the parties. Third party products may be subject to additional terms and conditions.
- b. **Order Changes/Cancellations.** Orders for Products may not be changed or cancelled once placed.
- c. **Governing Law; Arbitration.** This Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to the conflicts of laws provisions thereof or the UN Convention on the International Sale of Goods). Unless otherwise elected by Seller in writing for a particular instance, the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts located in California, and both parties consent to the jurisdiction of such courts; provided that without limiting Seller's right to seek injunctive or other equitable relief in court, either party may elect (by written notice given prior filing a complaint or, in the case of the defendant, prior to answering a complaint) to resolve a dispute by binding arbitration in the English language in San Diego, California under the rules of JAMS; the decision of the arbitrator will be enforceable in any court. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys fees.
- d. **Representations and Warranties.** Purchaser is not an authorized dealer, representative, reseller, or distributor of any of Seller's, or its affiliates', products or services. Purchaser represents and warrants that it (i) is not purchasing the Product on behalf of a third party, (ii) is not purchasing the Product in order to resell or distribute the Product to a third party, (iii) is not purchasing the Product in order to export the Product from the country in which Seller shipped the Product pursuant to the ship-to address designated by Purchaser at the time of ordering ("**Ship-To Country**"), and (iv) will not export the Product out of the Ship-To Country.
- e. **Remedies for Breach.** In addition to any remedies specified elsewhere under these terms and conditions, and any remedies available to Seller under law or in equity, in the event Purchaser breaches these terms and conditions, Seller may do any, all, or any combination of the following: (i) cease performance, including without limitation, cease further shipments of Product, (ii) terminate the rights granted to Purchaser pursuant to Section 2 (Rights to Product Upon Purchase), (iii) terminate any service contracts then in effect for affected Product, (iv) terminate any remaining product warranty for the affected Product, or (v) require Purchaser to immediately pay any unpaid invoices.
- f. **Seller Affiliates or Licensors.** Any actions or rights that may be performed or exercised by Seller may be performed or exercised by Seller itself or by any of its affiliates or licensors. By way of non-limiting example, Seller's affiliates or licensors may carry out shipment, servicing, invoicing and receipt of payment.
- g. **Force Majeure.** Seller is not responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Seller's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Purchaser's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.
- h. **Notices.** Any notice required or permitted shall be in writing and shall be deemed received when (i) delivered personally; (ii) 5 days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or 10 days for international mail); or (iii) 1 day after deposit with a commercial express courier that provides written verification of receipt.
- i. **Seller Information.** Seller may maintain and use a database of orders and account information pertaining to Purchaser for purposes of order processing, maintaining records, assisting with future orders of Purchaser, and compliance with applicable laws and regulations. Purchaser may not disclose any financial terms of this transaction to any third party without the prior written consent of the Seller, except as (and only to the extent) required by securities or other applicable law. Purchaser grants to Seller a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable, perpetual right and license, with the right to sublicense,



to use and commercialize in any manner suggestions, ideas or comments provided by Purchaser to Seller related to the Products.

- j. Export Compliance.** The Products, any related technology, or information provided to Purchaser may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder (or the export regulations and laws of another country). Notwithstanding anything to the contrary in these terms and conditions, Purchaser agrees not to use the Products in, or export or re-export the Products, any related technology, or information provided to Purchaser into, any country or to any person or entity, or in any manner, in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.
- k. Healthcare Law Compliance.** Purchaser acknowledges and agrees that as a healthcare company, Seller, and Seller's affiliates, may be required by applicable law and regulation ("Healthcare Laws") to disclose the existence of these terms and conditions, the terms herein including financial terms, and the subject matter (e.g., the U.S. Sunshine Act, and state and foreign equivalents). Seller agrees it, and its affiliates, will disclose the least amount of information as possible in order to comply with such Healthcare Laws.
- l. Publicity.** Purchaser agrees that it shall not issue any press release or make any public statement regarding acquisition of the Products, without prior written approval from Seller, which approval shall not be unreasonably withheld or delayed.
- m. Miscellaneous.** Except as expressly stated in these terms and conditions, no right or license under any of Seller, or Seller's affiliates, intellectual property rights is or are granted expressly, by implication, or by estoppel. All references to days mean calendar days unless specifically stated otherwise. Seller may cease performance (including cancellation of any order outstanding) immediately without liability to Purchaser if Purchaser becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors. No amendment to these terms or waiver of any right, condition, or breach will be effective unless made in a writing signed by both parties. If any provision is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remaining terms will continue in full force and effect. The failure of either party to exercise any right granted herein or to require any performance of any term or the waiver by either party of any breach shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term. Nothing herein shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. There are no third party beneficiaries to these terms and conditions.
- n. Professional Services and Advanced Training.** Unless otherwise set forth in writing by Seller or otherwise agreed between the parties, all Professional Services and Advanced Trainings purchased by Buyer will expire 12 months after the date of Purchase Order.



Addendum A

A 1-year base warranty at the Basic Plan service level is included with every new instrument purchase, along with installation and basic on-site applications training by a field application scientist. Basic on-site training offered as part of the first year Basic Plan Service level needs to be scheduled and completed in the first 12 months following receipt of the instrument by the customer.

The following Service Plans are available after expiration of the base warranty.

Parts Only- Includes full coverage for replacement parts. Includes email and telephone support during regular business hours Monday-Friday. Onsite service, labor, and travel not included.

Bronze Plan: Includes full coverage for parts, labor, and travel; reagent replacement upon instrument failures; Includes email and telephone support during regular business hours; 5-business day average onsite response; hardware/software updates; onsite applications support; discounts on advanced training. No Preventative Maintenance.

Silver Plan: Includes full coverage for parts, labor, and travel; reagent replacement upon instrument failures; Includes email and telephone support during regular business hours; 3-business day average onsite response; hardware/software updates; onsite applications support; discounts on advanced training. One Preventative Maintenance is included.