



**AGILENT SERVICE TERMS**

These Agilent Service Terms ("Terms") along with the applicable description of Service ("Service Exhibit") and the terms indicated on the quotation govern the Service of Products and the license of software updates by Agilent Technologies, Inc. and its subsidiaries ("Agilent"). In the event of a conflict herewith, the Service Exhibit will prevail. "Product" means Agilent or third party hardware or consumable that is supported by Agilent as described, if applicable, in any Service Exhibits.

"Service" means any standard service to support Products."

**1. PARTIES RESPONSIBILITIES**

- a) Agilent will perform Service in a professional and workmanlike manner. Agilent will make reasonable efforts to deliver Service in accordance with the quotation or the applicable Service Exhibit and may select qualified and reputable subcontractors to perform Service.
- b) Product must be at current specified revision levels and may require Agilent's certification, at Customer's expense, that Product is in good operating condition.
- c) Product relocation may result in additional Service charges, modified service response times and if moved subject to availability.
- d) Customer must remove products not eligible for Service to enable Agilent to perform Service and may incur additional charges for any extra work caused.
- e) Service does not cover damage, defects or failures caused by: use of non-Agilent media, supplies and other products; site conditions that do not conform to Agilent's specifications; neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non-Agilent employees or subcontractors, or causes beyond Agilent's control.
- f) Customer is responsible for maintaining a procedure external to the Product to reconstruct lost or altered Customer files, data or programs, and for having a representative present when Agilent provides Service at Customer's site. Customer will notify Agilent if Product is being used in an environment that poses a potential health hazard. Agilent may require Customer to maintain such Product under Agilent supervision.

**2. ORDERS AND CANCELLATIONS**

- a) All orders are subject to acceptance by Agilent.
- b) Unless stated otherwise in the Service Exhibit, cancellation is subject to Agilent's prior consent and any applicable fees, details of which are available on request.
- c) Upon sixty (60) days written notice, Agilent may delete Product no longer included in Agilent's Service offering or may cancel a Service Exhibit.

**3. SHIPMENT, RISK OF LOSS AND ACCEPTANCE**

- a) Customer will pay all expenses for return of Product to the Agilent service center. Agilent will pay expenses for return of Product to Customer via Agilent's standard shipping methods.
- b) Risk of loss and damage for tangible deliverables will pass to Customer at the location specified in the quotation or order acknowledgment.
- c) Acceptance of Service will occur upon performance.

**4. PRICE AND PAYMENT**

- a) Prices exclude any applicable sales, value added or similar tax payable by Customer.

- b) Payment terms are per the quotation or order acknowledgement and are subject to change if Customer's financial condition or payment records so warrants. Agilent may stop performance if Customer fails to pay any sum due, or fails to perform under this or any other Agilent agreement if, after ten (10) days written notice, the failure has not been cured.

**5. WARRANTY**

- a) Agilent will replace, at no charge, defective parts used in Agilent's repair of Product for ninety (90) days from the date of Service.
- b) Agilent warrants that software updates will not fail to execute programming instructions due to defects in materials and workmanship when properly installed and used on hardware designated by Agilent. Agilent warrants that Agilent owned standard software updates substantially conform to specifications. Agilent does not warrant that software updates will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer. Agilent does not warrant that software updates will be uninterrupted or error free.
- c) Agilent Service may use remanufactured parts that are equivalent to new in performance.
- d) The above warranties do not cover defects resulting from improper or inadequate maintenance, installation, repair or calibration performed by Customer or an unauthorized third party; Customer or third party supplied hardware or software, interfacing or supplies; unauthorized modification; improper use or operation outside of the specifications for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation.
- e) THE WARRANTIES IN THESE TERMS ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. AGILENT SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**6. LICENSES**

Unless license terms are included with the software updates, software updates licensed under these Terms will be subject to the most current applicable underlying license.

**7. INTELLECTUAL PROPERTY CLAIMS**

- a) Agilent will defend or settle any claim against Customer that any deliverable provided under these Terms infringes an intellectual property right provided Customer promptly notifies Agilent in writing and provides control of the defense or settlement, and assistance to Agilent.
- b) In defending or settling an infringement claim under Section 7a), Agilent will pay infringement claim defense costs, settlement amounts and court-awarded



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damages. If such a claim appears likely, Agilent may, at its option, modify or replace the affected deliverable, or procure any necessary license. If Agilent determines that none of these alternatives is reasonably available, Agilent will refund Customer's purchase price.

- c) Agilent has no obligation for any claim of infringement arising from: Agilent's compliance with, or use of, Customer's designs, specifications, instructions or technical information; modifications by Customer or a third party; software update use outside the scope of Agilent specifications or related application notes; or use of the deliverable with products not supplied by Agilent.

**8. LIMITATION OF LIABILITY AND REMEDIES**

- a) In no event will Agilent, its subcontractors or suppliers be liable for special, incidental, indirect or consequential damages (including downtime costs, loss of data, restoration costs, or lost profits) regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion is independent of any remedy set forth in these Terms.
- b) The limitations set forth in Section 8 (a) above will not apply to infringement claims under Section 7 above, or to damages for bodily injury or death.
- c) The remedies in these Terms are Customer's sole and exclusive remedies.

**9. INDEMNIFICATION**

Agilent will indemnify and hold Customer harmless from and against any third party claims for (i) bodily injury or death, or (ii) direct damage to tangible property, to the extent caused by Agilent's gross negligence or willful misconduct in performing its obligations under these Terms, provided that Agilent is given prompt written notice and the opportunity to control the defense of the claim or settlement, and subject to the limitation of liabilities set forth in Section 8.

**10. INSURANCE**

For Service provided by Agilent, Agilent will maintain insurance providing, at a minimum, coverage as follows:

- a) Commercial General Liability insurance of US \$3,000,000 combined single limit for bodily injury and property damage, per occurrence and annual aggregate;
- b) Business Auto Liability insurance of US \$3,000,000 combined single limit for bodily injury and property damage, per occurrence; and
- c) Workers Compensation in amounts sufficient to meet legal requirements in jurisdictions where work will be performed. Employers' Liability of US \$1,000,000 per accident for bodily injury by accident, US \$1,000,000 policy limit by disease, and US \$1,000,000 per employee for bodily injury by disease.

**11. TERM AND TERMINATION**

- a) An order or a Service agreement may be terminated immediately upon notice in writing (a) by either party, for cause, unless the other party cures the breach within thirty (30) days of written notice of such breach

or (b) by Agilent if Customer fails to pay any sums due as specified in Section 4b) above.

- b) Any order or Service agreement will terminate automatically if either party is subject to a voluntary or involuntary bankruptcy petition, becomes insolvent, is unable to pay its debts as they become due, ceases to do business as a going concern, makes an offer or assignment or compromise for the benefit of creditors, or there is a substantial cessation of its regular course of business, or a receiver or trustee is appointed for such party's assets.
- c) Upon termination in accordance with 11a) or b) Customer will pay Agilent for all Service performed and charges and expenses incurred by Agilent up to the date of termination. If the sum of such amounts is less than any advance payment received by Agilent, Agilent will refund the difference within thirty (30) days of receipt of an invoice from Customer. Customer will receive all work in progress for which Customer has paid.
- d) Provisions herein which by their nature extend beyond the termination of any Service will remain in effect until fulfilled.

**12. GENERAL**

- a) Customer may not assign or transfer a Service agreement without Agilent's prior written consent, which may be subject to applicable charges and terms. Agilent may assign or transfer any of its rights or obligations under these Terms and applicable Service Exhibits upon notice.
- b) Agilent will store and use Customer's personal data in accordance with Agilent's Privacy Statement available at – [www.agilent.com/go/privacy](http://www.agilent.com/go/privacy). Agilent will not sell, rent or lease Customer's personal data to others.
- c) The parties agree to comply with applicable laws and regulations. Agilent may suspend performance if Customer is in violation of applicable laws or regulations.
- d) Customer who exports, re-exports, or transfers products, technology or technical data purchased hereunder assumes all responsibility for complying with applicable U.S. and all other laws and regulations ("Applicable Laws"), and for obtaining required export authorizations. Customer expressly agrees not to sell or otherwise transfer products, technology or technical data to companies or persons on the Denied Parties List and Specially Designated Nationals and Blocked Persons List, or to any other prohibited parties or restricted destinations listed in Applicable Laws, unless properly authorized by the appropriate government(s). Agilent may suspend performance if Customer is in violation of Applicable Laws. Further information on restricted destinations can be obtained from - <http://www.bis.doc.gov>.
- e) Use, distribution or disclosure of Products by the U.S Government is subject to DFARS 227.7202-3 (Rights in Commercial Computer Software), DFARS 252.227-7015 (Technical Data – Commercial Items), and FAR 52.227-19 (Commercial Computer Software-Restricted Rights).
- f) Disputes arising in connection with these Terms will be governed by the laws of the State of California.



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- g) To the extent that any provision or a portion of any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- h) These Terms and any Service Exhibits attached hereto constitute the entire agreement between Agilent and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply.