

# Post-Warranty Services Terms & Conditions

## 1. Agreement

This Post-Warranty Service Agreement (“**Agreement**”) is between the customer (“**Customer**”) identified in the Quotation (as defined below) incorporated herein and Leica Biosystems Melbourne Pty Ltd (“**Leica**”). By submitting a purchase order for post-warranty services including support, repair or maintenance (“**Services**”), as applicable, Customer agrees to the following terms and conditions. Any other terms and conditions submitted by the Customer on any purchase order are hereby expressly excluded. In the event of a conflict between the terms of the Quotation and the Agreement, the terms of the Quotation will prevail to the extent of the inconsistency.

## 2. Definitions

“**Contract Period**” shall mean the time period of coverage for the applicable Services as set forth for each Product(s) on the Quotation.

“**Hardware Upgrades**” shall mean an enhancement to improve Product performance, safety, or functionality that may be subject to additional fees.

“**Order**” shall mean any transactional document or purchase order under which Customer may purchase a Service Package for a Product. All Orders are subject to the terms and conditions in this Agreement.

“**Preventative Maintenance**” means the scheduled standard maintenance inspections provided on a Product.

“**Products**” shall collectively refer to and include the following: “**Consumables**” which include disposable materials and other Products which may be used in conjunction with Hardware; “**Hardware**” means the equipment, system, or other instruments provided and/or manufactured by Leica and all console firmware or software embedded therein; “**Reagents**” means liquid materials in its application state which may be used in conjunction with Products; and “**Software**” means all programs, routines, codes, compilers, applications, tools, algorithms, APIs and development kits, in whatever form or format Leica designates to provide.

“**Quotation**” shall mean the proposal for Services issued by Leica to Customer, which sets forth pricing, Service Package selections and applicable Contract Periods for each Product which incorporates these Services Terms and Conditions.

“**Service Request**” shall mean a customer initiated request for assistance to Leica technical support using established methods of communication including; email, phone, or web based notification.

“**Service Package**” shall mean the complete service offering set forth in the Quotation. Service Packages may be subject to change or customization, at Leica’s sole discretion.

“**Software Updates**” shall mean bug fixes, patches, and minor enhancements to the Software currently licensed to Customer that are provided to Customer at no charge during the Contract Period.

“**Software Upgrades**” shall mean functionality beyond existing Software applications currently licensed to Customer and may be subject to additional fees.

“**User Maintenance**” shall mean and include all standard and routine operator maintenance required to be performed by Customer as set forth in the applicable Leica user manual provided with or made available for each Product.

## 3. Technical and On-site Support

Leica (or its authorized service agent) will provide Services Monday through Friday, excluding Leica observed holidays, during normal working hours of 8:30am to 5:00pm local time. Subject to the availability of personnel, after-hours support is available upon request at an additional charge. Customer acknowledges that the Products may not be available for use during Preventative Maintenance and service visits. Preventative Maintenance will be scheduled upon request by Customer. Leica, at its option, will perform Services at either the Customer’s facility or the nearest Leica authorized service center or facility. While every effort will be made to render Services promptly, Leica does not make any guaranty regarding specific response times to a Service Request, or Product up time minimums, all of which may be available for purchase under separate contract.

## 4. Additional Services

Services which are not otherwise included in a specific Service Package, such as (but not limited to) relocation services, are available for purchase under separate contract.

## 5. Eligibility

In the event that there has been a gap of Leica service coverage for any Product for a period greater than thirty (30) days, such Product may be subject to inspection, certification, and up-front Preventative Maintenance, at Customer’s expense, to ensure that such Product meets Leica’s standards for maintenance and support. Leica, at its sole discretion, shall determine Product eligibility for service.

## 6. Customer Responsibilities

During the Contract Period, Customer shall:

- (a) Ensure that the Product is operated at all times by users who have received Product training in accordance with the applicable Leica UserManual.
- (b) Perform all required User Maintenance and schedule annual Preventative Maintenance visits with Leica.
- (c) Notify Leica immediately through Leica’s established methods of communication of any Product malfunction and provide a full description of the issue.
- (d) Provide Leica with notice of its intent to move a Product.
- (e) Grant Leica remote access to provide remote support.
- (f) Maintain and update computer virus definitions as damages resulting from computer related viruses are excluded from this Agreement.

## 7. Service Visit Requirements

Prior to Leica performing any Services, Customer shall:

- (a) Provide Leica full and free access to the Products requiring Services at the time(s) scheduled.

- (b) Promptly notify Leica of any hazardous or dangerous environments and instruct and assist Leica in preventing exposure.
- (c) Ensure that any third-party auxiliary equipment which is affixed to or positioned near the Product is removed or adequately protected. Leica shall not be responsible for any accidental damage in the event Customer fails to remove or protect such auxiliary equipment.
- (d) Implement safeguards to protect all programming, programs, data and other removable storage media. Leica shall not be responsible for any accidental damage in the event Customer fails to implement the necessary safeguards to protect all programming, programs, data and other removable storage media.
- (e) Ensure an authorized Customer representative is available to sign Leica applicable documentation upon Services completion. If an authorized Customer representative is not available to sign Leica applicable documentation upon Services completion and Customer requires Leica to perform additional work and/or attendance, there may be additional costs payable by the Customer.

## 8. Pricing

- (a) **Fees.** All Service fees, as set forth on the Quotation, shall remain firm for the duration of the Contract Period. Fees shall be invoiced for additional Services as required.
- (b) **Payment.** Payment is due net thirty (30) days from date of invoice unless otherwise stated in the Quotation.
- (c) **Default in Payment.** If Customer fails to make any payment to Leica on the relevant payment due date, Leica shall be entitled to charge for a late payment interest at the discount rate charge by Westpac New Zealand Limited plus two percent (2%) per annum or the highest rate allowed by law, whichever is higher, on overdue accounts. Upon default, without prejudice and in addition to such other rights Leica may have under this Agreement and any applicable laws, Leica shall be entitled to (i) suspension of the supply of all Products and/or Services not fully paid for by the Customer and (ii) reimbursement of all out-of-pocket and consequential expenses incurred by Leica in collecting any payments (plus the applicable interests) due, including (but not limited to) any attorneys’ fees and collections fees. In addition, Leica shall have the right to demand advance payment for future orders or to require irrevocable and confirmed letters of credit to be opened. For the avoidance of doubt, Leica will not be liable to the Customer for any losses and damages suffered by the Customer arising out of the suspension due to the Customer’s default.
- (d) **Taxes.** All Service fees are exclusive of any applicable, sales tax, goods and services taxes, value added tax, or any similar taxes or other charges. Customer is responsible for all taxes, duties, fees and expenses imposed by federal, state or local governmental entities, applicable to the Services furnished hereunder or in lieu thereof, Customer shall provide Leica with a tax exemption certificate acceptable to and considered valid by the applicable taxing authorities.

## 9. Termination

- (a) This Agreement shall be effective and shall continue in full force and effect throughout the Contract Period, unless otherwise terminate in accordance with the terms and conditions of this Agreement.
- (b) **For Material Breach.** Termination of this Agreement by Leica will be permitted in the event of a Material Breach that if possible, to cure, remains uncured sixty (60) days after written notice by Leica to the Customer. Leica may terminate this Agreement immediately upon written notice to the Customer in the event of an incurable Material Breach. A “Material Breach” is defined as (a) the failure of the Customer to fully comply with its obligations under this Agreement; (b) the making of assignment for the benefit of creditors by the Customer; (c) the institution of bankruptcy, reorganization, liquidation or receivership proceedings by or against the Customer; and (d) insolvency of the Customer.
- (c) **Biohazard Contamination.** In the event a Product comes in contact with an agent classified as biological hazard by the New Zealand Government, Customer shall immediately notify Leica and Leica, at its sole discretion, shall determine whether a remedial course of action to provide Services is acceptable.
- (d) **Beyond Repair.** In the event that Leica determines that the cost to repair a Product exceeds its fair market value, Leica has the sole right to reject the Customer’s Order and terminate this Agreement. In such instance, Leica may refund, after deducting all costs and expenses incurred by Leica in performing the works up to the effective termination date, the unutilised portion of the fees already paid by Customer during the applicable Contract Period.

## 10. Standard of Service

Leica represents and warrants that the Services provided under this Agreement will be performed in a workmanlike and professional manner with reasonable skill, care and diligence, all in accordance with standard industry practices and in compliance with all applicable laws. All Services shall be provided by an authorized Leica representative subject to the fees set forth under the applicable Quotation. Services, including repair parts, shall be warranted for a period of ninety (90) days from the original service date or the original installation date for the relevant repair part, as applicable. For the avoidance of doubt, warranty period does not renew upon provision of a replacement of repair parts

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and/or re-performance of services. Customer's sole remedy for breach of warranty shall be a re-performance of the Services. Leica does not warrant that the Services will render a Product to be error free or that continued use and operation of the Product will be uninterrupted. The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, express, implied, or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

## 11. Exclusions

- (a) Service support shall not apply to any defect or performance deficiency on a Product (including failure to conform to Product descriptions or specifications) or damage thereto which results, in whole or in part, from: (1) neglect, abuse, misapplication, accident, improper storage or handling of the Product by Customer, its employees, agents, or contractors; (2) failure of Customer to prepare or maintain the site or provide power requirements or operating environmental conditions in compliance with any applicable instructions or recommendations of Leica; (3) adverse power conditions or environmental conditions such as erratic power, voltage spikes, RF or magnetic interference, HVAC failure or sprinkler system failure, lightning, static electricity, fire, storm, vandalism, water damage, or other casualty beyond the control of Leica or its representatives, acts of God, of damages ordinarily covered by insurance; (4) absence of any Product, component, or accessory recommended by Leica but omitted or removed at Customer's direction; (5) any misuse, alteration or damage to the Product by persons other than Leica; (6) the combination, operation, or use of Products with hardware, software, and/or consumables not supplied or authorized in writing by Leica; (7) improper or extraordinary use of the Product, improper maintenance of the Product, failure to maintain the Product or failure to comply with any applicable instructions or user manuals provided by Leica; (8) any servicing performed, repairs attempted, or Product relocation by personnel not authorized in writing by Leica; (9) any modification, alteration, or variation to Product to comply with the requirements or regulations of any governmental body or agency; (10) any change to operating system software ("OS") including the third-party original equipment manufacturers' discontinuance of support of the OS (i.e., Microsoft). Customer is responsible for expenses associated with changes to the OS, including software licensing fees, Hardware modifications and/or additional Hardware costs and technical support fees associated with implementing a superseding OS. In the event that Customer elects to continue using an unsupported OS, Customer shall do so at its own risk and expense, and Leica shall have no obligation to support Product failures proximately resulting from the unsupported OS.
- (b) In the event that the Customer requests Leica to perform maintenance and/or repair services on the Product excluded from the Services due to any reason set out in Clause 11(a) above, Leica shall have the sole discretion to decide whether to accept such request and if Leica agrees to accept, Leica will charge the Customer for additional fees and/or charges in respect of the works to be performed by Leica. Leica will perform such services after the Customer's acceptance of the additional fees and/or charges as well as deliverables timeline.

**12. Product Improvements.** Leica, at its sole discretion, may issue, routinely without schedule or commitment, Software Updates, Software Upgrades and Hardware Upgrades. Certain Software Upgrades and Hardware Upgrades may require Customer to purchase additional equipment or hardware.

## 13. Replacement Parts

Leica, at its sole discretion, will determine if replacement parts are required and reserves the right to use factory refurbished material or parts for repairs of Product under this Agreement. Labor to install any replacement parts is included as part of the Service Package. All parts which become subject to removal and replacement shall become the property of Leica. Consumables and Reagents are not eligible for replacement under this Agreement.

## 14. De-identification of Personal Data

The Customer acknowledges that Leica would not require access to any Personal Data, including patients' Personal Data, at any time in performance of its obligations under this Agreement. Where applicable, in the event any data is required to remedy technical issues and/or performance of the Products ("Permitted Purposes"), the Customer agrees that prior to providing or granting access to such data to Leica, the Customer shall be responsible to ensure all Personal Data in such data, if any, are De-Identified and Coded to ensure that the identity of the individual to whom the data pertains is not identifiable to and is not traceable by Leica and/or Leica's Personnel. The Customer further represents that it has established policies and procedures in place to prevent the release of individuals' Personal Data and is responsible for informing and ensuring its employees to comply with the Customer's obligations in this clause. The Customer shall fully indemnify Leica and its affiliates against any and all claims, losses or damages arising from or related to non-compliance of this clause including but not limited to costs on a solicitor/attorney-client basis.

For the purpose of this clause,

- (a) "Personal Data" means any information, data and/or opinion relating to and about an identified or reasonably identifiable natural person;
- (b) "De-Identified" means the identity of the individuals is not known to and ensure data is not traceable by Leica and/or Leica's Personnel; and
- (c) "Coded" means that a number, letter, symbol, or combination thereof (i.e. the code) has replaced identifying individual information (such as name or

- national registered identification number); and
- (d) "Leica's Personnel" means employees, agent and/or contractor of Leica associated with the performance of its obligations under this Agreement.

## 15. Limitation of Liability

EXCEPT AS OTHERWISE REQUIRED BY LAW, IN NO EVENT WILL LEICA BE LIABLE TO CUSTOMER OR ANY LOST REVENUES, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ECONOMIC LOSS, DOWNTIME OR UNAVAILABILITY OF A PRODUCT AS A RESULT OF A MALFUNCTION, MAINTENANCE OR REPAIR, OR PROPERTY DAMAGE INCURRED BY THE OTHER PARTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF LEICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT OF LIABILITY, LEICA'S MAXIMUM LIABILITY HEREUNDER WILL NOT EXCEED THE PRICE OF THE PRODUCTS OR SERVICES FURNISHED BY LEICA GIVING RISE TO THE CLAIM.

Leica's liability (if any) under these Terms and Conditions for any loss and/or damage incurred by the Customer and/or any third party will be reduced proportionately to the extent that any fault, negligent act, or omission of the Customer (or its subcontractor, agent, or personnel) and/or third party contributed to those loss, damage, expense, or liability. Leica's rights and remedies in these terms are in addition to, and not in lieu of, any other rights or remedies Leica may have at law or in equity.

## 16. Remedies

Without limiting its remedies under existing law, Leica may, in the event of a Material Breach by Customer, and in its sole discretion, pursue any or all of the following remedies:

- (a) suspend or cancel its performance hereunder, including any pending Services; (b) declare all unpaid balances, payments and expenses due or to become due hereunder immediately due and owing (c) terminate this Agreement without additional liability or obligation to Customer; (d) seek any other cumulative remedies at law or in equity or (e) exercise any all rights and remedies available to a secured creditor under the applicable laws. The foregoing remedies are cumulative, and may be exercised by Leica, in whole or in part, at Leica's sole discretion. The substantially prevailing party shall be entitled to its attorneys' fees, costs, and expenses (including expert expenses) in connection with any claims, causes of action or litigation.

## 17. Compliance

Customer shall comply fully with all applicable laws, rules and regulations, including those of the United States, Leica's home country (if not the United States), and any and all other jurisdictions globally which apply to the use of the Instrument(s) and/or Customer's business activities in connection with this Agreement.

## 18. Governing Law

This Agreement is governed by and construed in accordance with the laws of New Zealand, without regard to conflicts of laws provisions. The parties consent to the sole and exclusive venue and jurisdiction of the courts in New Zealand. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Any action by Customer for loss or damage arising from or related to the Products and/or Services must be commenced within the earlier of one (1) year from the date of delivery or occurrence of the event, or such claim will be forever barred. If Leica substantially prevails in any legal dispute, Customer shall pay all reasonable costs incurred by Leica, including but not limited to collection costs, attorneys' fees and costs of legal action.

## 19. Force Majeure

Except as expressly stated in this Agreement, neither party shall be liable for any failure to perform hereunder (other than the payment of sums due and owing) due to labor strikes, lockouts, fires, floods, water damage, pandemic, riots, government acts or orders, interruption of transportation, inability to obtain material upon reasonable prices or terms, or any other causes beyond its control.

## 20. Severability; Waiver

In the event that any one or more provisions contained herein (other than the provisions obligating Customer to pay Leica for the Services) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. A party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

## 21. Notices

Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three days after being sent via registered mail with return receipt requested, by overnight mail, by courier, by first-class mail, postage prepaid, or via email (with evidence of receipt required) at the addresses specified herein for the respective parties or at such other address as either party may from time to time designate to the other in writing.

## 22. Assignment

This Agreement may not be assigned by either party without the prior written consent of the other party, whose consent shall not be unreasonably withheld. Notwithstanding any provision of this Agreement to the contrary, either party shall have the right to assign or otherwise transfer its interest under this Agreement, without consent of the other party, to any of its affiliated entities or to any entity to which a party may sell, transfer, convey, assign or lease substantially all of the assets or properties used in connection with its performance under the Agreement. Any other assignment of the Agreement without the express written consent of the other party will be invalid.

## 23. Independent Contractor

Leica is performing the Services as an independent contractor and not as an employee of Customer and none of Leica's personnel shall be entitled to receive any compensation,

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benefits or other incidents of employment from Customer. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between Customer and Leica, nor shall anything in this Agreement be deemed to constitute Leica or Customer the agent of the other. Neither Leica nor Customer shall be or become liable or bound by any representation, act or omission whatsoever of the other.

## **24. Confidentiality**

This Agreement, an Order and any material transmitted herewith may contain information confidential or proprietary to either party, its subsidiaries or affiliates (“**Confidential Information**”) and such information is not to be used by the receiving party other than the purpose for which it was transmitted by the disclosing party. Each party shall (i) hold such information in strictest confidence and not disclose such information to third parties without prior, written consent of the disclosing party and (ii) not collect, access, retain use or share the Confidential Information other than for performance of the Services under this Agreement.

## **25. Intellectual Property Rights**

With the exception of any pre-existing Intellectual Property Rights or any open source software, all Intellectual Property Rights in any material created in the performance of its obligations under this Agreement vests in, or is hereby transferred or assigned to, Leica immediately upon creation.

Nothing in these Agreement confers or is deemed to confer on the Customer any licence, right or other interest in any intellectual or other property or rights comprised in the products or in any designs, drawings or specification relating to the products, which at all times, as between Leica and the Customer, are vested in Leica.

## **26. Modifications**

No amendments or additions to this Agreement is binding unless made in writing and signed by the duly authorized representatives of each party.

## **27. Contra Proferentem**

The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to this Agreement.