

## 1 APPLICABILITY

All purchase orders for services and extended warranty coverage ("Service Agreement") are accepted and executed on the understanding that the Customer is bound by the following Standard Conditions of Sale for Service ("Terms"). Where there is inconsistency between these Terms and any conditions which the Customer seeks to impose, these Terms shall prevail. Any deviations to these Terms shall only be binding upon Hamilton if approved in writing.

## 2 SERVICES

Hamilton shall provide the services to Customer in North America as described in the Service Agreement ("Services") in accordance with these Terms. The Services provided shall be limited to the following:

(a) Maintenance Service: Hamilton agrees to provide maintenance service to keep the covered instrument(s) in good working order throughout the term of this Service Agreement, as more fully set forth in Section 7 below. Maintenance service includes periodic preventive maintenance according to specific needs of the instrument as recommended by Hamilton. This preventive maintenance may be performed during the course of remedial maintenance. Maintenance service also includes lubrication, adjustments, and replacement service parts, all as deemed necessary by Hamilton. Replacement parts may be new or refurbished and are furnished on an exchange basis; the replaced parts become the property of Hamilton.

(b) If either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. Hamilton shall, within a reasonable time after such request, provide a written estimate to Customer of: (i) the likely time required to implement the change; (ii) any necessary variations to the fees and other charges for the Services arising from the change; (iii) the likely effect of the change on the Services; and (iv) any other impact that the change might have on performance of this Service Agreement. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change ("Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

(c) Hamilton may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in a Service Agreement.

(d) Hamilton does not allow third-parties to contract Services on behalf of the instrument owner. Service Agreements will be contracted exclusively with the instrument owner.

(e) Hamilton reserves the right to prohibit Customer from obtaining or retaining a Service Agreement if use of third-party consumables (i.e. third-party tips) is discovered. Hamilton shall have the right to discontinue Services, and also at its discretion, to terminate an active Service Agreement as stated under Section 12 of this document.

## 3 RIGHT TO INSPECTION

Hamilton reserves the right to inspect any instrument prior to inclusion under this Service Agreement and may require that the instrument(s) be returned to the proper operating specifications at the Customer's expense prior to inclusion.

## 4 PERFORMANCE DATES

Hamilton shall use reasonable efforts to meet any performance dates requested, however any such dates shall be estimates only. At the conclusion of this Service Agreement term Hamilton has no obligation to extend unused services such as but not limited to preventative maintenances.

## 5 PAYMENT TERMS

5.1 Customer shall pay all invoiced amounts due to Hamilton in US dollars, NET thirty (30) days from the date after receipt of Hamilton's invoice. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Hamilton, whether relating to Hamilton's breach, bankruptcy, or otherwise.

5.2 Should an invoiced amount be disputed by the Customer; Customer shall have the opportunity to pay the dispute in full under protest in order to avoid the application of penalties and interest. Should the dispute be determined and resolved in favor of the Customer, Customer shall be entitled to reimbursement of the disputed amount.

## 6 TAXES AND FEES

Customer will pay, when due, all taxes, including sales, use, privilege, excise, personal property, value added, and other taxes, but not federal or state income or franchise taxes imposed on Hamilton, and all other governmental charges, assessments, fees and any related interest or penalties imposed with respect to the Products or the transactions contemplated by a Purchase Agreement.



## 7 CUSTOMER OBLIGATIONS

Customer shall:

- (a) Provide a suitable environment for the instruments as specified by Hamilton, including adequate space and electrical power, and to provide Hamilton full, free and safe access to the instruments and shall cooperate with Hamilton in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Hamilton, for the purposes of performing the Services;
- (b) Respond promptly to any Hamilton request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Hamilton to perform Services in accordance with the requirements of this Service Agreement;
- (c) Provide such customer materials or information as Hamilton may request to conduct the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and
- (d) Obtain and maintain all necessary registrations, licenses and consents to comply with Hamilton's standard operating procedures of the system per the operator's manual and all applicable laws in relation to the Services before the date on which the Services are to start.

## 8 CUSTOMER ACTS OR OMISSIONS

If Hamilton's performance of its obligations under this Service Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Hamilton shall not be deemed in breach of its obligations under these Terms or this Service Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

## 9 PARTS AND LABOR

This Service Agreement includes all required service parts, travel and labor except as otherwise stated within these Terms. Consumable parts, including tips, carriers, syringes, tubing, and valves, are not included.

## 10 SERVICE HOURS

Service will be provided Monday through Friday during the regular business hours of 8 a.m. to 5 p.m., excluding Hamilton holidays. All phone inquiries will receive a follow up call within four (4) hours. If service is required, every effort will be made to be on site on the same or next regular business day. Inoperable instruments will take priority over other calls such as preventive maintenance.

## 11 DEFAULT

Hamilton shall have the right to discontinue Services, and also at its discretion, to terminate this Service Agreement if the Customer defaults in payment as stated under section 5 of this document or in respect of its other obligations to Hamilton.

## 12 TERMINATION OF SERVICE

The Customer may withdraw any or all instruments from this Service Agreement by providing Hamilton with sixty (60) days written notice. Upon said termination Hamilton, at its discretion, shall refund the lesser of, the agreement amount less the pro-rated agreement amount or the service agreement value, less the time and material cost of Services rendered by Hamilton based on the rates in effect at the time of Service. Either party may withdraw any or all instruments from this Agreement at any time for failure of the other to comply with any of these Terms.

## 13 LIMITED WARRANTY

13.1 The repair of damage, replacement of parts, or any increase in Service time caused by accident, disaster, neglect, abuse, misuse, transportation, modifications, accessories, use of third-party consumables (i.e. third-party tips), unauthorized software, or non-Hamilton repairs are not covered by this Service Agreement. This Service Agreement does not cover computer equipment sold with Hamilton instruments; such warranty is transferred to the computer manufacturer immediately after the sale. Service Agreement support for third-party integrated instruments must be explicitly identified in this Service Agreement for coverage.

13.2 The warranty expressly does not cover damage caused by normal wear and tear, faulty maintenance performed by a third party, use of third-party consumables (i.e. third-party tips), failure to observe the operating instructions, and installation not carried out by Hamilton as well as due to other reasons for which Hamilton is not responsible. HAMILTON MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY (a)



WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

#### **14 LIMITATION OF LIABILITY**

14.1 IN NO EVENT SHALL HAMILTON BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL HAMILTON'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO A PURCHASE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO HAMILTON FOR THE PRODUCTS SOLD IN THE PURCHASE AGREEMENT.

14.2 The limitation of liability set forth in Section 14.1 above shall not apply to (i) liability resulting from Hamilton's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Hamilton's gross negligent or willful acts or omissions.

#### **15 NO GUARANTEE**

Services provided do not assure uninterrupted operation of instruments and Hamilton is not responsible for failure to render Services due to causes beyond its control including Force Majeure.

#### **16 FORCE MAJEURE**

Hamilton shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Service Agreement or these Terms, for any failure or delay in fulfilling or performing any obligations stated when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Hamilton including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

#### **17 WAIVER**

No waiver by Hamilton of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Hamilton. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

#### **18 ATTORNEY FEES**

Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Service Agreement the parties shall be responsible for their own attorney's and accountant's fees associated with the costs of litigation, and in no event shall the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party against whom enforcement was sought.

#### **19 CONFIDENTIAL INFORMATION**

All non-public, confidential, or proprietary information of Hamilton, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Hamilton to Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with a Purchase Agreement is confidential, solely for the use of performing the Purchase Agreement and may not be disclosed or copied unless authorized in advance by Hamilton in writing. Upon Hamilton's request, Customer shall promptly return all documents and other materials received from Hamilton. Hamilton shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.



## **20 PROTECTED HEALTH INFORMATION**

The parties agree that based upon and in reliance upon the representations, warranties and covenants set forth in this Section, Hamilton is not a Business Associate as defined in the Health Insurance Portability and Accountability Act of 1996 and implementing privacy and security regulations (HIPAA). Hamilton represents, warrants and covenants that in the performance of Services, Hamilton does not require and shall not request access to, nor attempt to access, any Protected Health Information of Customer or any of its affiliates.

## **21 ASSIGNMENT**

Customer shall not assign any of its rights or delegate any of its obligations under this Service Agreement without the prior written consent of Hamilton. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations herein.

## **22 NO THIRD-PARTY BENEFICIARIES**

This Service Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Service Agreement

## **23 LEGAL CONSTRUCTION**

These Terms and all Service Agreements to which the same apply shall be construed in accordance with the laws of the State of Nevada, U.S.A. Any disputes arising in connection with these Terms and all sale contracts to which the same apply shall be finally settled by arbitration in accordance with the laws and rules of the State of Nevada and such proceedings held and located in Reno, Nevada, U.S.A.

## **24 HIRING OF HAMILTON EMPLOYEES**

During the term of the Service Agreement, and for one (1) year thereafter, Customer shall not, without prior written approval from Hamilton Company, hire any Hamilton Company: a) employee; b) contract employee; c) agent; or d) affiliates.

## **25 SEVERABILITY**

If any term or provision of this Service Agreement are invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Service Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.