

SERVICE CONTRACT TERMS AND CONDITIONS

1. **In General.** These Service Contract Terms and Conditions (these “**Terms**”) shall govern all orders for and purchases from IntegenX Inc., a part of Thermo Fisher Scientific, Inc. (“**IXI**”) of written contracts (the “**Service Contracts**”) for the post-warranty service of instruments sold directly by IXI (the “**Products**”) to the customer end user (the “**Customer**”), and set forth the entire agreement between IXI and the Customer regarding the performance of such services.
2. **Performance of Services.** Services under a Service Contract are provided during normal working hours (Monday through Friday, 9:00 AM to 5:00 PM local time, excluding holidays). Telephone support hours are 9:00 AM to 5:00 PM PT, excluding holidays. Planned maintenance (“**Planned Maintenance**”) will be performed in accordance with IXI’s Planned Maintenance procedures and checklists for the instrument or component being serviced. IXI will use commercially reasonable efforts to provide service within the time periods specified in the applicable Service Contract. The service will be scheduled at a time mutually agreed upon by IXI and the Customer. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of IXI.
3. **Limited Warranty.** IXI warrants that it will provide the services under the Service Contract in accordance with generally recognized commercial practices and standards in the geographical area and at the time and place performed. Claims for breach of this warranty must be made within 90 days of the date the services were performed and prior to any unauthorized repair, change, or modification has been made to any part of the instrument. **IXI MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NONINFRINGEMENT WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. IXI’S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A COMMERCIALY REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT IXI OPTION. THESE ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES, AND IXI’S SOLE LIABILITY, FOR ANY BREACH OF THIS WARRANTY.**
4. **Exclusions from Service Contracts.** Service Contracts do not cover the following: (i) the use of the Product in combination with any software, tools, hardware, equipment, supplies, accessories or any other materials or services not furnished by IXI or its authorized distributors; (ii) the use of the Product in a manner or environment, or for any purpose, for which IXI did not design or license it, or in violation of IXI’s instructions and limitations on use; or (iii) any alteration, modification or enhancement of the Product by or on behalf of the Customer, or any other third party not authorized or approved in writing by IXI. In addition, the Service Contract does not cover the Product to the extent it is used in any country other than the country, market segment or territory in which the Product was located when the Service Contract was purchased (unless IXI expressly agrees otherwise in writing). In addition, the Service Contracts do not cover any defect or deficiency (including a Product’s failure to conform to Specifications or any technical documentation) that results, in whole or in part, from any improper storage or handling, failure to maintain the Product in the manner described in any applicable instructions or specifications (including without limitation the Site Preparation Guide, User Bulletins and User Guide), inadequate data file back-up or virus protection or any cause external to the Product or beyond IntegenX’s reasonable control, including, but not limited to, power surges or failures to keep the end user’s site clean and free of dust, sand and other particles or debris. Damages not covered by a Service Contract that require remedial repairs of the effected parts, will be repaired at IXI’s then prevailing time and material rates.

Unless otherwise agreed by IXI in writing, IXI only provides support for the current version and the immediately preceding version of the Product hardware and software; however the preceding software version is supported for a maximum period of twelve (12) months from date of release of the subsequent version. “Version” means a release of hardware or software that contains new features, enhancements, and/or maintenance updates, or, for certain software, a collection of revisions packaged into a single entity and, as such, made available to all Customers in good standing.
5. **Late Payments.** Payment terms for the Service Contract are net thirty (30) days from date of IXI’s invoice to Customer. If payment is not received by the due date, IXI may assess and customer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If IXI retains a collection agency and/or attorney to collect unpaid amounts, IXI may invoice Customer for, and Customer will pay, all costs of collection, including without limitation reasonable attorney’s fees.
6. **Term and Termination.** Unless otherwise expressly stated by IXI in writing or under the terms of the purchased

Service Contract, the initial term of a Service Contract is one year from the date designated by IXI in its quotation or otherwise specified to Customer. A Service Contract may be terminated by either party upon at least thirty (30) days written notice to the other party, if such other party (a) is in material breach of any obligation, which breach has not been remedied within the thirty (30) day period; (b) becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or makes a general assignment for the benefit of creditors. Termination will be effective thirty (30) days after the receipt of such notice. Any terms hereof which by their nature extend beyond termination or expiration will remain in effect until fulfilled and will apply to each party's successors and permitted assigns.

7. **Indemnification.** IXI will indemnify and hold Customer harmless from and against any and all third-party claims for injury or death of persons, or damage to tangible property, occurring while IXI personnel are on Customer's premises performing services pursuant to a Service Contract to the extent caused by the negligent acts or omissions of IXI, provided IXI is given prompt notice of such claim and the opportunity to control the defense and settlement thereof. As a condition to any indemnification obligation, Customer must (a) notify IXI in writing, as soon as Customer becomes aware of any claim; (b) not admit any liability or take any other action in connection with the claim that could affect the defense; (c) allow IXI to solely control the defense or settlement of the claim; and (d) give IXI Customer's reasonable information, co-operation and assistance.
8. **Limitations on Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IXI WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT CUSTOMER MIGHT INCURE UNDER THE SERVICE CONTRACT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH IXI'S PRODUCTS OR SERVICES, EVEN IF IXI HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IXI WILL NOT BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT, EQUIPMENT, OR PRODUCT ERROR OR THE FAILURE OF AN INSTRUMENT, EQUIPMENT OR OTHER PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. IXI'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH A SERVICE CONTRACT, INCLUDING WITHOUT LIMITATION ANY SERVICES RENDERED THEREUNDER, OR BREACH THEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO IXI FOR THE UNDERLYING SERVICE CONTRACT.
9. **Service Access; Limitations.** Customer will provide IXI access to the Products, and if applicable, adequate working space and facilities within a reasonable distance of the Products, as reasonably determined necessary by IXI, to service the Products. If Customer fails to provide such access, resulting in IXI's inability to provide support, IXI shall be entitled to charge Customer for the support call at IXI's then prevailing time and material rates. Customer is responsible for removing any products ineligible for support, as advised by IXI, to allow IXI to perform support. IXI may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable safe and secure location, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the service technician will not be exposed to any such materials. **IXI does not service instruments in BSL 3 and BSL 4 laboratories where active biological agents may be present and a danger to IXI personnel exists. IXI reserves the right to review these laboratories on a case by case basis to determine if entry may be possible if specific controls and conditions are met and validated by the appropriate IXI safety personnel.**
10. **No Training or Relocation.** Service Contract Plans do not include customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by IXI in any particular case.
11. **Force Majeure.** IXI shall not be liable for any delay or failure of performance where such delay or failure arises or results from any cause beyond IXI's reasonable control, including, but not limited to, flood, fire explosion, natural catastrophe, military operations blockade, sabotage, revolution, riot, civil commotion, war or civil war, acts of terrorism, plant breakdown, computer or other equipment failure, unusually severe weather, earthquake or other act of nature, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulations or any inability or delay in obtaining materials. In the event of any such delay or failure of performance, IXI shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances.

- 12. Sole Terms; Conflict of Terms.** These terms and conditions, together with the Service Contract and IXI's quotation therefor, and all other written conditions of use provided by IXI for the relevant Product (collectively, the "**IXI Final Terms of Sale**"), (a) shall constitute the complete, exclusive and entire agreement between IXI and Customer with respect to the purchase of and performance under the Service Contract (unless other terms and conditions are expressly designated to be applicable by IXI in writing by a duly authorized IXI representative), and IXI's offer to sell such Service Contract is expressly limited to such terms, and (b) shall control over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, between Customer and IXI with respect to such purchase(s), and (c) shall control over and supersede and replace, to the extent not accepted in writing by IXI as aforementioned, any additional or different terms and conditions contained in any statement in any purchase order by Customer, which additional or different terms and conditions are hereby rejected and shall be void unless specifically so accepted in a signed writing by IXI.

To the extent Customer's order documents and any terms and conditions contained therein materially alter the IXI Final Terms of Sale, the IXI Final Terms of Sale shall be deemed a counter-offer to any offer made by Customer through Customer's order documents. IXI reserves the right to withhold any performance under a Service Contract until such counter-offer has been accepted by Customer, provided, however, that Customer's acceptance of performance under a Service Contract shall be deemed final acceptance of and agreement to the terms of such counter-offer.

Except as otherwise provided in these terms and conditions, in the event of an inconsistency between these terms and conditions and the terms appearing on IXI's quotation or other agreement signed by an authorized representative of IXI, the terms appearing on IXI's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these terms and conditions, and all other provisions of these terms and conditions shall remain in full force and effect.

- 13. Assignment.** Neither this Service Contract Plan Agreement nor any Service Contract Plan is assignable or otherwise transferable by Customer. Any assignment or transfer or attempt to assign or to transfer by Customer shall be void.
- 14. Governing Law; Binding Arbitration.** This Service Contract and performance under it will be governed by the laws of the State of Delaware, USA, without any regard to provision on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Service Contract.
- 15. Miscellaneous.** No amendment or modification of the IXI Final Terms of Sale shall be binding unless in writing and signed by a duly authorized representative of each of IXI and Customer. IXI's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these terms and conditions for any other purpose. If any provision of these terms and conditions is held to be invalid or unenforceable for any reason, such provision shall, to the extent of such invalidity or enforceability, be severed from these terms and conditions without in any way affecting the remainder of such provision or any other provision hereof, all of which shall continue in full force and effect.