

# SERVICE CONTRACT

## Terms and Conditions

*Additional to the sales terms and conditions of;*

**Rithum Automation LLC**

THIS CONTRACT is made and entered into, by and between Rithum Automation LLC (the "Service Company or Rithum"), whose address is 112 Patriot Drive, Suite A, Middletown, Delaware 19709 and the "Customer".

WHEREAS Service Company is a company engaged in the business of servicing and maintaining Laboratory liquid handling systems and Microplate equipment and is willing to provide such services to Customer as per the terms herein.

WHEREAS Customer desires to have the Service Company furnish maintenance according to the following agreement:

**It shall be the responsibility of the Customer to provide:**

Regular cleaning and procedures as detailed in the manufacturers documentation for user/operator maintenance.

Electrical protection of the instrument and computer in the form of a properly sized and functioning UPS (Uninterruptable power supply).

Trained users of the equipment.

Proper safety equipment for the equipment and users.

Customer is required to answer questions via phone interview and assist Rithum help desk in diagnostic steps performed by the customer at the instrument.

Customer may be asked to replace certain user changeable parts provided by Rithum for replacement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows.

**1. Maintenance Services.**

Service Company shall maintain and service the list of equipment (the "Equipment"):

**As specified in the associated invoice provided to the customer.**

Customer will keep the Equipment in good working order. Service Company shall provide scheduled preventive maintenance during regular business with the schedule to be based on the specific needs of the Equipment as determined by Service Company. In addition, Service Company shall provide unscheduled remedial maintenance ("on-call service") as and when needed. Both scheduled and unscheduled service maintenance shall include the following as deemed necessary by Service Company.

**Services to be provided which are included in the contract price:**

Rithum will make reasonable efforts consistent with standard industry practice to provide the services indicated. The services shall be for the purpose of attempting to keep the Equipment in, or restore the

Equipment to working order, as defined in the manufacturer's operating specifications. Rithum does not assure uninterrupted operation of the equipment.

Unless otherwise provided elsewhere in this Agreement, all replacement parts are furnished on an exchange basis and the parts removed by Rithum become the property of Rithum.

The services include:

Annual PM (1 per contract year unless noted in invoice) (Periodic Maintenance) with replacement of tubing, valves, syringes. Testing and verification via Setup and Service application

Repair of unit not functioning due to the failure of a part due to wear and tear under normal use per the factory user's manual.

**Additional services and other charges:**

Any service provided by the Service Company outside the scope of the Service Agreement will be furnished as an "extra service" at the Service Company's standard rates of \$250.00 per hour for the time, travel and maintenance and under the terms of this section unless such service is otherwise covered by a separate agreement with the Service Company. The Customer shall pay Service Company for extra services within 10 days after receipt of the invoice covering such services.

The Service Company shall provide Gravimetric verification on site for additional \$2,500.00

**2. Excluded Services**

Unless authorized in writing by the Customer, the Services provided shall not include service, repairs or parts as a result of any of the following:

Error, neglect, or abuse in the operation of the Equipment, or the use of it for a purpose other than that for which it was designed. Customer's failure to provide a suitable environment for the Equipment or to adequately furnish all facilities required by the manufacturer's installation manual including but not limited to proper electrical power including the use of proper UPS or electrical protection unit or from any electrical surges or voltage variations, air conditioning and humidity control, Customer's failure to maintain the equipment in accordance with the routine maintenance requirements set forth in any manuals covering the Equipment.

Repair or service made or attempted to by any parties other than Service Company's authorized personnel without Service Company's prior written consent. "Alterations" which shall include, but not be limited to any deviation from the manufacturer's physical, mechanical or electrical design of the Equipment.

"Attachments" which are defined as devices the Equipment manufacturer has not specifically designated as compatible with the Equipment but which are nevertheless mechanically, electrically, or electronically connected to the equipment.

Occurrences during the transportation or relocation of the Equipment or accidents, or disasters, which shall include, but not be limited to, fire, flood, water, wind, lightning, earthquake, and termination of, or surge in electrical current.

The services also do not include the following:

Painting or refurbishing the equipment or performing service in connection with relocating equipment or adding or removing accessories, attachments or other devices.

Electrical work external to the equipment, maintenance of accessories, alterations, attachments, or other devices not furnished by the Equipment manufacturer.

Replacement of parts, except for normal wear and tear, or malfunction caused by operations supplies used by or with the Equipment.

Other safety tests or installations, whether or not recommended or directed by governmental authorities or by insurance companies.

Cleaning and decontamination.

Applications work or changes in Gemini, EVOware, Logic or any other application. Any work with Tecan Logic application.

If the services described in this provision are authorized by the Customer, and if the Service Company agrees to perform them, an additional charge of \$250.00 per hour will be made for the extra service pursuant to the terms of Section 1.

### **3. Trained Employees**

Trained personnel directly employed and supervised by the Service Company will perform all services required by the terms of this Contract. The Service Company agrees that each of its employees will be properly qualified and will use reasonable care in the performance of his or her duties.

### **4. Working Hours**

(a) The services required of the Service Company under this Contract, including emergency service, shall be performed during the regular working hours of its regular working days, consisting of 9am to 5pm, Monday through Friday excluding Holidays, except as provided in (b) immediately below.

(b) If the Customer requests that the Service Company perform any of its services at times other than during its regular working hours, then for the services performed outside the regular working hours ("overtime hours"), the Customer shall be charged additionally at \$125.00 per hour as adjusted periodically to compensate for changes in the cost of labor for both on site and travel to and from the customer.

Response times:

**GOLD LEVEL SERVICE:** (Standard) Response to initial help desk contact will be within 24 hours. Parts needed will be shipped via FedEx Ground within 48 hours. Response to travel to customer site for repairs will be 72 hours after initial help desk review of the problem report with the customer.

**PLATINUM LEVEL SERVICE:** (If specified on invoice) Response to initial help desk contact will be within 12 hours. Parts needed will be shipped via FedEx Overnight. Response to travel to customer site for repairs will be 72 hours after initial help desk review of the problem report with the customer.

**DIAMOND LEVEL SERVICE:** (If specified on invoice) Response to initial help desk contact will be within 4 hours. Parts needed will be shipped via FedEx Overnight. Response to travel to customer site for repairs will be 24 hours after initial help desk review of the problem report with the customer.

### **5. Contract Price**

The Customer shall pay the Service Company at the rate specified on the invoice for the regular services to be performed under this Contract. A contracts are required to be prepaid BEFORE the contract is in effect unless otherwise agreed in writing.

## 6. Term of Contract

The term of this Contract shall commence on the date specified on the invoice and shall continue in full force and effect until the end date on the invoice.

In any event, this Contract shall be in effect for a minimum of the term on the invoice. No refunds are given for early termination.

## 7. Extent of Liability

RITHUM MAKES NO EXPRESSION OF IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. RITHUM SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT FOR LOSS OF BUSINESS, LOST PROFITS OR OTHER INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, NOR SHALL RITHUM BE LIABLE FOR ANY DEMAND, ACTION, CLAIM, LOSS, COST, DAMAGE OR EXPENSE THAT MAY BE ALLEGED AGAINST THE CUSTOMER ARISING OUT OF PROPERTY DAMAGE, LOSS OR LIFE, BODILY INJURY, OR LOSS OF DATA, UNLESS AND ONLY TO THE EXTENT THAT IT IS DIRECTLY OR PROXIMATELY CAUSED BY THE NEGLIGENCE OF RITHUM IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

The Customer shall indemnify and hold harmless Rithum and Rithum's directors, officers, employees, agents, and other representatives from any demands, actions, claims, loss, cost or damage arising out of the Customer's misuse or neglect of the Equipment or Customer's failure to fulfill its obligations under this Agreement.

Rithum shall not be responsible for any loss, damage or delay or failure to provide service caused by acts of government, strikes, fire, explosions, theft, riots, flood, civil disorder, war, unusually severe weather, acts of God, the failure of others to supply parts, materials or supplies in a timely manner, the unavailability of transportation, or any cause beyond Rithum's reasonable control.

The Customer represents that it is the owner of the Equipment, or, if not the owner, has the authority to include such Equipment under this Agreement. In addition, the Customer represents that there are no outstanding liens, security interests or other encumbrances held by any third party on any Equipment, or if such encumbrance exists, that the third party has consented to the Customer obtaining the Service.

## 8. Miscellaneous Provisions

(a) **Applicable Law and Jurisdiction:** This Contract shall be construed under and in accordance with the laws of the Delaware, and all obligations of the parties created under this Contract are performable in the city, county and State specified in the invoice. The parties hereby irrevocably consent to the exclusive jurisdiction of any state or federal court in Wilmington, Delaware.

(b) **Parties Bound:** This Contract shall be binding on and inure to the benefit of the parties to this Contract and their respective heirs, executors, administrators, legal representatives, successors and assigns as permitted by this Contract.

(c) **Legal Construction:** In the event any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision. This Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

(d) **Prior Contracts Superseded:** This Contract constitutes the sole and only Contract of the parties and supersedes any prior understandings or written or oral Contracts between the parties respecting the subject matter of this Contract.

(e) **Amendments.** This Contract may be amended by the parties only by a written instrument executed by an authorized representative from each party.

(f) **Attorneys' Fees:** If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled.

## **8. Signatures**

This Contract shall be in force based on acceptance of the customer by payment of the invoice provided for the contract. No signature is required.