



Terms and Conditions of Instrument Service Contract

1 Contract Definitions

- 1.1 "**Instrument**" means the Gly-Q™ Glycan Analysis System (product code GQ2100), on which ProZyme, Inc., and if applicable, any affiliate of ProZyme, Inc. (collectively "PZI"), shall provide the Instrument Services.
- 1.2 "**Customer**" is the company, organization, or individual who owns the Instrument and instrument service contract purchased from PZI.
- 1.3 "**Instrument Services**" means the repair and maintenance services provided by PZI for the Instrument, but excluding consumables and software.
- 1.4 "**Contract**" means the contract for Instrument Services purchased by Customer, to which these terms and conditions apply.

2 Contract Duration

- 2.1 The "**Contract Period**" shall mean the time period of coverage as set forth for the Instrument on the Purchase Order and/or Invoice pursuant to which Customer purchased the Contract.
- 2.2 Two (2) months prior to the expiry of the Contract Period PZI will deliver a reminder to Customer for renewal of the Contract.
- 2.3 For Instruments which have not been maintained under a PZI service contract or PZI warranty immediately prior to the date of this Agreement, PZI reserves the right, at its discretion, to inspect (at Customer's cost) the Instrument(s) for any existing defects prior to accepting any orders for a service contract from the Customer. The cost of repair of any existing defects is not included in the price of the Contract.

3 Instrument Services Included

- 3.1 Preventative Maintenance: On one occasion each year of the Contract Period, PZI shall perform a preventative maintenance (PM) service of the Instrument at a mutually agreed time.
 - 3.1.1 Such preventative maintenance service is likely to take the Instrument out of action for up to one (1) working day while the service is carried out, and PZI shall have no liability for any loss of profit, loss of business or revenue, loss of anticipated savings, or any indirect or consequential loss which arises out of or in connection with such service.
 - 3.1.2 The preventative maintenance service shall include:
 - ✓ Inspection, cleaning, and replacement of wear items according to the maintenance schedule for the Instrument
 - ✓ Upgrade of any software to the extent such upgrade can be done without a hardware or operating system upgrade
 - ✓ Performing the Installation Qualification and Operation Qualification (IQ and OQ) tests
- 3.2 Instrument Repair: If at any time during the Contract Period if the Instrument is not operating according to the specifications set forth on PZI's website, as revised from time to time in PZI's sole discretion, PZI will repair the unit subject to the restrictions in section 3.3 below
 - 3.2.1 PZI shall provide unlimited service visits during the Contract Period including labor and travel expenses subject to the provisions in section 4.2 below.

3.2.2 PZI shall replace any component(s) that have failed or are otherwise defective with no additional cost to the customer during normal operation of the Instrument

✓ PZI reserves the right to use refurbished or reconditioned parts to effect the repair of an Instrument.

3.2.3 If PZI determines that the Instrument cannot be repaired on site and must have it returned to the factory for repair PZI will provide a loaner unit for the duration of the repair upon request.

3.3 Restrictions: Instrument Repair will not cover replacement of parts, labor, or travel expense for defects and damage resulting from:

3.3.1 Any act, error, fault, omission, neglect, carelessness, or misuse including without limitation any use which is not in accordance with the instructions issued with the Instrument or its appendices, or improper or inadequate maintenance of the Instrument;

3.3.2 Modification, change, alteration, addition or repair of the Instrument other than by PZI or a party authorized by PZI to perform such modifications or repairs;

3.3.3 Installation of any hardware that is not authorized by or supplied by PZI

3.3.4 Any incorrect power supply, failure of electrical power, faulty heating, air conditioning, humidity control, electrical surges or voltages exceeding those outlined in the user manual or installation guide, or any damage caused by computer viruses or hackers;

3.3.5 Any other defects or damage not caused by PZI.

3.3.6 Computer: PZI does not warrant and will not service computer hardware. Computers purchased from PZI as part of a system are warranted by the computer manufacturer. Customer will be referred to the computer manufacturer and Customer should reference PZI when contacting the computer manufacturer.

4 Service Levels

4.1 PZI shall issue an initial response to Customer within one (1) working day upon receipt of email or telephone conversation. Customer shall provide PZI with its preferred contact information in the form of an email address or telephone number.

4.2 Before initiation of Instrument repair, PZI will attempt to diagnose and resolve any issues with the Instrument using email or telephone conversation. If the issue cannot be resolved in this manner a service visit for Instrument repair will be made at a mutually agreed time.

4.3 PZI will make reasonable effort to arrange a service visit within three (3) working days of identifying the need for a service visit.

4.4 Instrument Services are normally provided between 8am to 5pm Monday to Friday (local time), excluding public holidays. Exceptions can be made by mutual agreement.

5 Customer Responsibilities

5.1 At all times during the Contract Period, the Customer must adhere to the following:

5.1.1 Ensure that the Instrument is operated at all times by trained personnel in accordance with its applicable PZI Instruction Manual.

5.1.2 Perform all required User Maintenance and schedule annual Preventative Maintenance Service visits with PZI.

5.1.3 Notify PZI immediately of any malfunction or inoperability of an Instrument and provide a full description of the fault or problem. PZI contact information can be found at the top of page 1 of this document.

5.1.4 Provide on request a suitably qualified or informed representative, agent or employee to accompany PZI's personnel when providing the Instrument Services or to render such assistance or to give such advice as will enable PZI's personnel to exercise unrestricted access to the site and the Instrument and otherwise to perform the Instrument Services.

6 Safe Working Environment

- 6.1 The Customer shall ensure that any personnel attending Customer's premises in connection with the Instrument Services shall have sufficient access to the Customer's premises and room to perform the Instrument Services in a safe working environment. Customer shall release the Instrument from all operational demands while the Instrument Services are being performed.
- 6.2 Customer shall ensure that all Instruments are fully decontaminated and free of any radioactive, biological, toxic or other dangerous materials or substances. PZI reserves the right to request a copy of an accurate and completed decontamination certificate before performing any Instrument Services.
- 6.3 PZI reserves the right at its absolute discretion to refuse to perform the Instrument Services in any location which PZI reasonably deems unsafe for any personnel to perform the Instrument Services.

7 Cancellation

- 7.1 Unless otherwise agreed in writing between PZI and the Customer, no refund of any portion of the price paid for the Contract pertaining to the unexpired Contract Period will be made by PZI if the Customer elects to cancel the Contract prior to the expiry of the Contract Period.
- 7.2 Unless otherwise agreed in writing between PZI and the Customer, the Contract is not transferrable and is cancelled if the Customer no longer owns the Instrument.

8 Force Majeure

- 8.1 PZI shall not be liable to Customer nor be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of PZI's obligations in relation to the Instrument Services, if the delay or failure was due to force majeure. For the purposes of this clause, force majeure shall mean any unforeseen event beyond the reasonable control of PZI such as, but not limited to, any act of God, act of government or any authorities, hostilities between nations, war, riot, civil commotions, civil war, insurrection, blockades, import or export regulations or embargoes, rainstorms, national emergency, earthquake, fires, explosion, flooding, hurricane or other exceptional weather conditions or natural disaster, acts of terrorism, accidents, sabotages, strikes, shortages in material or supply, infectious diseases, epidemics, as well as travel restrictions or travel warnings due to any such events. If any delay in performing, or any failure to perform the Instrument Services is caused by the delay of a subcontractor of PZI, and is beyond the control and without the fault or gross negligence of PZI, PZI shall incur no liability for such delay.

9 Limited Warranty, Limit of Liability, Indemnification

- 9.1 PZI warrants that it will provide the Instrument Services in a proper, workmanlike and professional manner at all times; it will exercise the reasonable standards of skill, care and diligence in the performance of the Instrument Services; it will retain a sufficient number of personnel with the expertise required to provide the Instrument Services; and its personnel possess the required skills and experience required to provide the Instrument Services. The above warranty does not replace or supersede any warranty applicable to the Instrument as specified in the documentation applicable to Customer's purchase of the Instrument.
- 9.2 EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 9.1, PZI MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- 9.3 PZI SHALL HAVE NO LIABILITY FOR ANY LOSS OF USE OR PROFITS (ACTUAL OR ANTICIPATED), PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS OF OPPORTUNITIES, LOSS OF REVENUE, COST OF CAPITAL, COSTS OF REPLACEMENT, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF INFORMATION OR DATA, LOSS FROM ANY THIRD PARTY CONTRACTS, LOSS DUE TO BUSINESS INTERRUPTION, LOSS OF INTEREST, LOSS OF POWER, COST OF PURCHASED OR REPLACEMENT POWER, CONTRACTUAL CLAIMS FROM THIRD PARTIES OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES OF ANY KIND, HOWEVER CAUSED AND REGARDLESS OF FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF PZI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, PZI'S TOTAL CUMULATIVE LIABILITY FOR ANY ACT OR OMISSION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE THEORY SHALL NOT EXCEED IN THE AGGREGATE, A REFUND OF THE PRICE PAID FOR THE INSTRUMENT PLUS THE AMOUNT OF FEES PAID FOR THE INSTRUMENT SERVICES. THIS CLAUSE 9.3 SHALL APPLY TO THE BENEFIT OF PZI'S PERSONNEL, AFFILIATES AND SUB-CONTRACTORS.

- 9.4 Customer shall indemnify, defend and hold PZI and its personnel and agents harmless from and against any claim, demand, liability, expense, cost, loss of or damage to any property or injury to or death of any person caused by any act or omission or breach of the Contract by Customer, its employees, agents or servants

10 General

- 10.1 Customer shall not assign the Contract or any part thereof without the prior written consent of PZI. PZI shall be entitled to sub-contract any part of the Instrument Services to be provided hereunder.
- 10.2 Each right or remedy of PZI under the Contract is without prejudice to any other right or remedy of PZI whether under the Contract or not.
- 10.3 If any provision of the Contract shall be held to be illegal, invalid or unenforceable in whole or in part, either under enactment or rule of law, such provision or part shall to that extent be deemed not to form part of the Contract but the legality, validity and enforceability of the remaining provisions of the Contract shall not be affected.
- 10.4 Any waiver by PZI of any breach of, or any default under, any provision of the Contract by Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms or conditions of the Contract.
- 10.5 No term or condition of the Contract is enforceable by any person who is not a party to the Contract, and PZI and the Customer may exercise, without the consent of any third party, any rights they may have to amend or rescind the Contract.
- 10.6 The Contract shall be governed by and construed and interpreted in accordance with the laws of the State of California, United States of America, without giving effect to conflict of laws, and the Parties hereto hereby consent to submit to the jurisdiction of the courts of the State of California, County of Alameda, in connection with any dispute arising out of or concerning this Agreement.