

ALCON TERMS OF SERVICE

These Terms of Service shall apply to all Technical services provided by Alcon Laboratories, Inc. (“Alcon”), a corporation organized and existing under the laws of the State of Delaware, located at 6201 South Freeway, Fort Worth, Texas 76134-2099 and the Customer identified in a Service Plan or a purchase order for Technical service for certain Alcon designated equipment (the “Equipment”). Alcon and Customer may be referred to individually as a “Party” or collectively as the “Parties.” All capitalized terms not defined herein shall have the meanings ascribed to them in the Service Plan.

- 1. Services and Payment.** Alcon hereby agrees to provide to Customer the Equipment Services at the service plan level selected in the Service Plan (the “Services”) or as referenced on a purchase order for technical service, and Customer agrees to pay for such Services. All invoices for Services must be paid in full within 30 calendar days of the date of the invoice. If a claim for any amounts due hereunder is referred to any collection agent or any legal action initiated to recover such amounts is initiated by Alcon, a service charge for undisputed invoices may be added, at Alcon’s option, at the rate of 1 ½% per month (18% per year) or the maximum legal rate, whichever is less, to unpaid invoices from the date of such referral or initiation.
- 2. Taxes.** Customer shall be responsible for all applicable sales and use taxes due to any federal, state, or local taxing authority by virtue of these Terms of Service.
- 3. Modifications for Safety or Reliability and Enhancement Software Upgrades.** If Alcon determines that a modification to the Equipment (whether hardware or software) is necessary to address safety or reliability concerns identified by Alcon, then Alcon will install the modification in the Equipment at no additional cost. Alcon may also install Enhancement Software Upgrades (as defined herein for the Equipment at no additional charge. Enhancement Software Upgrades are defined as software upgrades that improve existing functionality of the Equipment but do not include software upgrades that provide new functionality for the Equipment. Software upgrades that provide new functionality for the Equipment are not subject to this Section and may incur an additional fee.
- 4. Termination.** Either Party may terminate the Services, in whole or with respect to any individual piece of Equipment, at any time by providing the other party with prior written notice (the “Cancellation Notice”), with such Cancellation Notice to Alcon to be effective 60 days after receipt by Alcon Contracts Department at Service.Contracts@alcon.com. For any Equipment removed from this Agreement (the “Cancelled Equipment”) at Customer’s request, Alcon will calculate the value for all parts, labor, travel and administration time to perform or manage Equipment Services on the Cancelled Equipment from the start of the then-current applicable Service Period through the date of termination at Alcon’s then-current standard time & materials rates (the “Actual Alcon Value”). If the Actual Alcon Value exceeds the Service Fee for the applicable Service Period, no refund will be due. To the extent the Actual Alcon Value is less than the Service Fee paid for the applicable Service Period, Customer will receive a credit for the difference, which will be prorated and issued in the form of an on-account Customer credit.
- 5. Exclusions.** The Services do not entitle Customer to receive, or obligate Alcon to provide, any service or products not specifically identified in the Service Plan. Without limitation, the Services *do not* include: (i) any repairs or service attributable to accidents, fluid or cleaning damage, casualty loss, or other acts of God; (ii) any disposable products, implanted products or consumable supplies; (iii) any fiber optics and indirect or LIO; (iv) video or video attachments not sold with the system; (v) services associated with realignment of non-Alcon microscope mounts, or relocation, re-installation (such as site preparation) or removal of the Equipment; or (vi) any repairs or service attributable to Customer’s or an end user’s: (a) mishandling or misuse of the Equipment (including, without limitation, Customer’s or end user’s failure to comply in all material respects with the manuals and instruction materials provided by Alcon regarding the Equipment, its use and its maintenance); (b) failure to permit only Alcon service representatives to perform maintenance, to repair or to adjust the Equipment; and (c) use of non-approved parts. Customer acknowledges that the Services to be provided by Alcon pursuant to these Terms of Service only apply to the Equipment and not other products that the Equipment may interface with or be installed in. Alcon may elect to provide services or products not included in a Service Plan on a case by case basis at Alcon’s then current charges, up to and including time and materials, to the extent that such services are then available from Alcon.
- 6. Equipment Verification and Equipment Rehabilitation.** Alcon reserves the right to verify the condition of the Equipment at any time and to terminate the Services for such piece of Equipment if Alcon discovers that the Equipment (i) has been serviced by someone other than an Alcon authorized service representative; or (ii) had performance deficiencies prior to entering into a Service Plan. If Alcon determines that a piece of Equipment requires servicing and/or repairs in order for such Equipment to meet Alcon’s equipment specification standards (“Equipment Rehabilitation”), Alcon will notify Customer prior to enrolling the Equipment in the Service Plan and may separately invoice Customer for the service time and materials required to perform the Equipment Rehabilitation.
- 7. Limited Warranty and Insurance.** Alcon warrants that the Services provided hereunder will be performed in a workmanlike manner in accordance with reasonable commercial standards for the duration of the Service Plan only. Alcon does not warrant that the operation of the Equipment will be uninterrupted or error free. THE WARRANTY STATED IN THE FIRST LINE OF THIS SECTION AND REMEDIES SET FORTH HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, RESPECTING THE SERVICE PLAN, AND THE SERVICES AND PARTS PROVIDED HEREUNDER. ALCON MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR INDEMNIFICATION INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RESPECTING THE SERVICES AND PRODUCTS PROVIDED HEREUNDER. Alcon will maintain commercial general liability insurance with respect to the services provided under these Terms of Service, and shall have the right to self-insure to meet this requirement.
- 8. Recertified Parts.** Alcon reserves the right to use recertified parts in performing its obligations hereunder provided such parts meet all specifications and are covered by the same warranty as new parts. All parts removed from the Equipment for replacement become the property of Alcon.
- 9. Remedies.** In the event of liability by Alcon under the Service Plan, Customer’s remedies shall be limited to monetary damages, which shall not exceed the total amounts paid or payable during the twelve (12) months preceding the date such liability was incurred. Customer acknowledges that the Service Fees, are based in part upon the limited warranty and limitation of liabilities and remedies set forth in these Terms of Service. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS, INJURY TO GOODWILL, OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10. Government Contracts.** If the Services purchased under the Service Plan are to be utilized in Government contracts and when applicable by their terms, the following provisions are incorporated in these Terms of Service by reference the force and effect as though set forth in full text herein: FAR 52.219-8 (Utilization of Small Business Concerns); FAR 52.222-26 (Equal Opportunity); FAR 52.222-35 (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era); FAR 52.222-36 (Affirmative Action for Workers with Disabilities); FAR 52.222-39 (Notification of Employee Rights Concerning Payment of Union Dues or Fees); FAR 52.222-41 (Service Contract Act of 1965); FAR 52.247-64 (Preference for Privately-Owned U.S. Flag Commercial Vessels). The full text of a FAR clause may be accessed electronically at <http://www.arnet.gov/far>.
- 11. Access to Books and Records.** In the event Alcon shall be deemed to be a subcontractor subject to the disclosure requirements of 42 U.S.C. § 1395x(v)(1)(I), or amendments thereto, until the expiration of four (4) years following the completion of furnishing services under the Service Plan, upon written request of Customer, Alcon shall make available to the Secretary of the Department of Health and Human Services, or to the Controller General, or any duly authorized representatives thereof, a copy of the Service Plan and such books, documents, and records of Alcon that are necessary to certify the nature and extent of the costs to Customer of the services provided pursuant to the Service Plan. If Alcon carries out its duties of the Service Plan through a subcontract with a related organization involving a value or cost of \$10,000.00 or more over a twelve-month period, Alcon shall cause such subcontract to contain a clause to the effect that until the expiration of four (4) years after furnishing of such services pursuant to such subcontract, upon written request of Customer, the subcontractor shall make available to the Secretary, or to the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents, and records of the subcontractor that are necessary to verify the nature and extent of costs incurred by Alcon for such services.

12. **Confidentiality.** All Service Plan pricing and Technical service are confidential and not intended to be disclosed to any third-party; provided, however, that either party may disclose such information to the extent required by law or pursuant to the order or request of a court, administrative agency, or other governmental body. Alcon may further disclose such information to the extent reasonably necessary in the ordinary course of business.
13. **Force Majeure.** Neither Party shall be liable for any failure or delay in the performance or shipment of any order when such failure or delay is directly or indirectly caused by or in any manner arises or results from fire, flood, accident, riot, war, governmental interference, rationing, allocations or embargoes, strikes or shortages of labor, delay in delivery of material by suppliers, or other difficulties (whether or not similar in nature to any of the foregoing) beyond its control.
14. **Governing Law.** These Terms of Service are governed by and construed in accordance with the substantive and procedural laws of the State of Texas (without regard to conflict of law principles).
15. **Notices.** All notices required or permitted hereunder shall be sufficient if sent via U.S. mail or express courier delivery to a Party at its address as set forth in the Service Plan, or at such other address as the Party may designate to the other in writing from time to time. Any such notice mailed via U.S. mail shall be effective three (3) days after it has been duly addressed and postmarked via the U.S. Postal Service. Notices may be delivered electronically only with written acknowledgment of receipt by the other Party, effective upon such acknowledgement of receipt, provided that confirmation of the notice is subsequently sent in the manner specified above within a reasonable time.
16. **Severance.** If any sections, sentences, clauses, or phrases of these Terms of Service are found by any court or administrative body of competent jurisdiction to be invalid, void, and/or unenforceable, for any reason, neither the Terms of Service generally nor the remainder of the Terms of Service shall, as a result, be rendered invalid, void, and/or unenforceable.
17. **Entire Agreement and Modification.** These Terms of Service constitute the final entire agreement of the parties hereto with respect to the subject matter hereof, and shall supersede any other agreements or proposals, whether oral or written, pertaining to the subject matter hereof, including, without limitation, any purchase order issued by Customer. Customer acknowledges that Alcon sales representatives are not authorized to vary the Alcon Terms of Service. Alcon objects to and shall not be bound by any terms and conditions contained in Customer's purchase order forms (regardless of when such purchase order is issued by Customer) related to a Service Plan. Alcon shall have the right to modify these Terms of Service at any time, however such modification shall not be binding upon a Customer until Customer is notified by Alcon in accordance with these Terms of Service.
18. **Survival.** Expiration or termination of the Services shall not relieve the Parties of any obligation accruing prior to such expiration or termination. Except as set forth elsewhere in these Terms of Service, the rights and obligations of the Parties contemplated by these Terms of Service shall survive expiration or termination of the Services.
19. **Waiver.** No claim or right arising out of any term or condition of these Terms of Service or out of any breach of these Terms of Service can be discharged in whole or in part by a waiver of the claim or right unless the waiver is in writing signed by the Party granting such waiver. If any term or condition of these Terms of Service is held invalid, the remaining terms and conditions of these Terms of Service shall not be affected thereby.
20. **Assignment.** Alcon may assign or sub-contract its obligations and/or rights under the Service Plan. Customer may not assign or sub-contract any of its rights or obligations under these Terms of Service without the prior written consent of Alcon, other than to an Affiliate of the party assuming all of its rights and obligations under these Terms of Service (a "Permitted Assignee"). The assigning party shall remain fully liable for performance of a Permitted Assignee. For purposes of this Section, the term "Affiliate" means, with respect to a party, any corporation or other business entity Controlled by, Controlling or under common Control with that party, whereby "Control" means the direct or indirect ownership of more than fifty percent (50%) of the equity interest in such corporation or business entity, or the ability in fact to control the management decisions of such corporation or business entity and "assignment" shall include transfers of rights or obligations whether voluntarily or involuntarily, through merger, consolidation, dissolution, change of control, by operation of law or any other manner. Any attempted assignment in violation of these restrictions shall be void.
21. **Binding Effect.** The provisions of these Terms of Service shall be binding upon and shall inure to the benefit of Customer and Alcon, their respective successors, and permitted assigns.