

	<p>SERVICE AND SUPPORT AGREEMENT FOR INSTRUMENTS</p> <p>ATTACHMENT B</p>	<p>US</p>
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SERVICE AND SUPPORT TERMS AND CONDITIONS

Last updated and effective as of January 1, 2024. Replaces any prior version in its entirety.

Welcome to Miltenyi. These Service and Support Terms and Conditions ("**Terms**") govern the terms and conditions under which Miltenyi provides the Services (as defined herein) to Customer during the Coverage Period (as defined herein) in relation to instruments and equipment. These Terms shall apply to the Service and Support Agreement (as defined below), as entered between the Miltenyi entity as identified in the Service and Support Agreement, ("**Miltenyi**") and the customer, as identified in the Service and Support Agreement ("**Customer**").

1. DEFINITIONS

- 1.1. "Additional Services" means additional Services that were not listed in the Service Plan but have been agreed by the Parties in a Change Order or other written document.
- 1.2. "Affiliated Company" means any person, any company or any other corporate entity which, directly or indirectly, controls, is controlled by, or is under common control with, such person, where "control" shall mean the ownership of more than 50 % of the share capital or of the voting rights of the company or entity concerned.
- 1.3. "Agreement" means collectively the Service and Support Agreement, the respective Service Plan, these Terms and any related Change Order.
- 1.4. "Authorized Service Provider" means a qualified service provider (whether through Miltenyi's Affiliated Companies or a third party), as appointed by Miltenyi, to provide the Services to Customer on Miltenyi's behalf.
- 1.5. "Change Order" means a written change to the Service and Support Agreement, which authorizes the addition, deletion or revision of the Services and the associated costs, deadlines and other related factors.
- 1.6. "Commencement Date" means the start date of the Coverage Period, as set out in the form of Service and Support Agreement.
- 1.7. "Confidential Information" means any information disclosed between the Parties in relation to the Services, including, without limitation, any data, know-how and any other information in relation to Miltenyi's products, designs, product support, business plans, business opportunities, research, and development, whether protected by intellectual property rights or not.
- 1.8. "Coverage Period" means the total time period (including the Initial Term and any applicable Renewal Terms) during which Miltenyi will provide Services to Customer under the Agreement.
- 1.9. "Covered Equipment" means the equipment and the instruments at Customer's Site to which the Services shall be applied, as identified in the Service and Support Agreement.
- 1.10. "Effective Date" means the date of the last signature on the Service and Support Agreement.
- 1.11. "Initial Term" means the time period specified in Service and Support Agreement.
- 1.12. "Miltenyi Business Hours" means those business hours from Monday through Friday, during which the Miltenyi Affiliated Company specified in the Service and Support Agreement generally conducts business and offers its Services.
- 1.13. "On-site" means the provision of the Services at the Site.
- 1.14. "Party" means Miltenyi and Customer individually and "Parties" mean Miltenyi and Customer collectively.
- 1.15. "Remote Services" means the provision of the Services off-Site through internet connection, network and/or other remote access technology, known or unknown at time of the Effective Date.
- 1.16. "Renewal Term" means the time period(s) specified in Service and Support Agreement.
- 1.17. "Services" means the Services to be provided by Miltenyi to Customer in accordance with the Agreement and/or any related Change Order.
- 1.18. "Service Fees" means the fees, as defined in the Service and Support Agreement, to be paid by Customer to Miltenyi in accordance to Section 10.
- 1.19. "Service Plan" means the scope of Services, as described in Attachment A.

1.20. "Service and Support Agreement" means a written document agreed between and signed by the Parties for the provision of Services which incorporates or refers to these Terms. Specifically, the following documents may constitute such a Service and Support Agreement: (i) contract order form executed between the Parties or (ii) purchase order for Services issued by Customer and accepted by Miltenyi.

1.21. "Site" means the location of the Covered Equipment specified in the Service and Support Agreement.

2. SCOPE OF SERVICES.

2.1. Scope. Miltenyi will provide the Services, as described in the Service Plan (Attachment A) and/or in any related Change Order, in accordance to this Agreement.

2.2. Pre-Services Inspection. Miltenyi may require Covered Equipment to be submitted for inspection prior to the Commencement Date. If the condition of Covered Equipment is below average quality, Miltenyi will inform Customer about required services to restore the quality of the Covered Equipment with a cost estimate based on Miltenyi's applicable time and material hourly rates. Any pre-services inspections and related services are not included in this Agreement and shall be performed at Customer's expense and upon a separate order by Customer, governed by Miltenyi Biotec General Terms and Conditions for Sale of Products and Services to be found at www.miltenyibiotec.com/terms-of-sale. The restoration of the condition of the Covered Equipment shall be a condition precedent of this Agreement, and (a) the Agreement other than this Section 2.2 shall not be binding until the condition precedent is met, and (b) the Agreement will automatically terminate if such restoration is not completed within ninety (90) days after Miltenyi informs Customer that restoration is required.

2.3. Standard of Performance. Miltenyi will perform all Services in a professional and workmanlike manner and in accordance with the requirements agreed under this Agreement. Miltenyi will comply with reasonable standards of skill, care and diligence in the performance of the Services and retain a sufficient number of personnel with the expertise and the skill set required to provide the Services. Miltenyi will use commercially reasonable efforts to provide the Services in accordance with agreed timelines. Customer agrees and acknowledges, however, that any communicated times or deadlines shall be a good faith estimate only and shall not constitute Miltenyi's binding confirmation to provide the Services until this specific date. Hence, time shall not be of the essence. Miltenyi will notify Customer in writing if substantial delays in the completion or provision of the Services are anticipated.

2.4. Change Orders. Each Party may at any time propose changes to the scope of the Services. Customer may request to add Additional Services to the Service Plan or order individual Services to be provided on a one-time basis. If the requested changes result into additional efforts, having impact on costs, schedule and deadlines, Miltenyi will inform Customer of any associated extra costs and changes of schedule and deadlines. If Customer wishes to add Additional Services to the Service Plan, the Parties shall agree on a Change Order, stipulating any relevant adjusted Service Fees, schedules and terms, as required for the adjusted scope of the Service Plan. A Change Order shall only be effective if agreed by the Parties in writing. In the absence of such a signed Change Order, Miltenyi shall not be obliged to proceed with any proposed changes. In order to purchase individual Services to be provided on a one-time basis, Customer shall submit a separate order in accordance with Miltenyi Biotec General Terms and Conditions for Sale of Products and Services to be found at www.miltenyibiotec.com/terms-of-sale. Individual Services will be charged at Miltenyi's applicable time and material hourly rates (depending on type of service), and as set forth in the separate order.

2.5. Changes to Services. Miltenyi may change or modify the scope of the Services and the terms and conditions of this Agreement for any legitimate reason. Such a legitimate reason may include, without limitation, changes (i) of applicable laws, regulations, court order or other instructions of a governmental or regulatory body that require the adaptation of the Services, (ii) of technical framework conditions (e.g. new technology standards), and (iii) of any third party products and services that are required to provide the Services. Customer shall be notified about such changes with a 30 days' prior notice in writing or via email, and such changes will automatically be effective 30 days after delivery of such notice. If Customer objects to any such changes, Customer may terminate this Agreement immediately as per Section 15.2 by providing written notice to Miltenyi within 30 days after delivery to Customer of the notice of such changes. Notwithstanding the foregoing, with a thirty (30) days' prior notice, Miltenyi may retire specific Services, provided Miltenyi continues to meet the material requirements of this Agreement, and the foregoing termination right shall not apply to such changes that do not otherwise change to the terms and conditions of this Agreement.

2.6. Subcontracting. Customer agrees and acknowledges that the Services may also be provided by an Authorized Service Provider, at the sole discretion of Miltenyi, provided that Miltenyi remains responsible for the performance of the Authorized Service Provider under this Agreement and for their compliances with the terms and conditions of this Agreement.

2.7. Personnel. Miltenyi warrants that its personnel shall be under its sole and exclusive direction and control. Miltenyi shall be solely responsible for all matters relating to payment of its personnel including compliance with worker's compensation, disability insurance, personal income tax, due or levies and work permits and all other laws, rules and regulations.

3. EXCLUSIONS AND ADDITIONAL SERVICES

- 3.1. If not otherwise agreed between the Parties in the Agreement, the Services do not include:
- a) Repair of damages arising from the act, error, fault, neglect, excessive usage, misuse, improper operations or omission of the Customer or its employees, agents, staff, contractors or any other person acting on behalf or for the Customer.
 - b) Repair of damages caused by materials, accessories, devices, extensions, attachments that either (i) have been used, associated with or attached to the Covered Equipment, without Miltenyi's prior authorization, or (ii) are not Covered Equipment, whether or not purchased in a bundle with the Covered Equipment.
 - c) Repair of cosmetic damages, including, without limitation, cracks, dents, fissures or scratches, that do not materially impair or affect the functionality of the Covered Equipment.
 - d) Repair of damages by incorrect power supply, failure of electrical power, extreme environment (including extreme temperature or humidity) or any external factor outside of Miltenyi's control.
 - e) Repair of any pre-existing damages that incurred prior to the Commencement Date.
 - f) Maintenance services of defective Covered Equipment. Any obligation to provide maintenance services shall be suspended until such defect of the Covered Equipment has been remedied.
 - g) Services for Covered Equipment that has been relocated without Miltenyi's prior authorization.
 - h) Services of altered, modified or customized Covered Equipment, whether done with or without prior Miltenyi's authorization, unless otherwise confirmed by Miltenyi in writing. If the Covered Equipment is altered, modified or customized during the Coverage Period and if Miltenyi determines that Services cannot be performed, Miltenyi shall have the right to terminate this Agreement as per Section 15.2.
 - i) Services in relation to devices, materials, accessories, extensions, or attachments that are not Covered Equipment, whether or not bundled with the Covered Equipment.
 - j) Supplying, replacing or furnishing (i) consumables and/or other expendable items (e.g. reagents, columns, tubing sets, absorbers, batteries and other operating supplies), and (ii) spare parts beyond the normal level of wear and tear.
 - k) Installation, de-installation, relocation and/or removal of the Covered Equipment, unless required for Service provision.
 - l) Initial installation and operational qualification Services (IQ/OQ) of the Covered Equipment.
 - m) Any Services necessary to comply with changes of applicable laws, regulations, directives and/or orders, instructions or regulations arising or issued by any government body or agency after the Effective Date.
- 3.2. Miltenyi may provide the services referred to in Section 3.1 or any other Additional Services requested by Customer at extra costs, if agreed by the Parties in a Change Order or separate written agreement.

4. SERVICE PROCEDURES

- 4.1. General. The Services will be performed in accordance with Miltenyi's latest established internal service procedures and standards. Such established service procedures and standards may vary by region, depending on the Site. Miltenyi reserves the right to change the internal service procedures and standards at any time. Upon Customer's request and if agreed in the Service and Support Agreement, Miltenyi shall notify the customer in writing of such change in advance with reasonable notice.
- 4.2. Service Hours. All Services will be performed during Miltenyi Business Hours, unless otherwise expressly agreed by the Parties in writing. Any Services performed outside of Miltenyi Business Hours may be charged with an overtime surcharge. Response times shall be as set out in Attachment A or as otherwise agreed by the Parties in writing.
- 4.3. Obtaining Services. Customer may contact the Miltenyi Support Center by telephone, facsimile, or e-mail (contact information can be found at <http://www.miltenyibiotec.com>) to request and schedule Services.
- 4.4. Maintenance Services. Maintenance intervals may vary, depending on Covered Equipment and region, and are recommended by Miltenyi in the user manuals or other product documentation for the Covered Equipment. Times and dates for the provision of maintenance Services shall be mutually agreed by the Parties within the recommended maintenance intervals. If the Covered Equipment consists of more than one unit, all units shall be serviced as part of the same maintenance visit unless otherwise agreed by the Parties. Customer shall obtain all relevant permits and approvals from relevant authorities, governmental and/or regulatory bodies required for the maintenance Services.
- 4.5. Services Option. If possible, Miltenyi will assist Customer by providing Remote Services. If Miltenyi decides that further Services are required, Miltenyi will perform the Services through one or more of the following options, at Miltenyi's sole discretion:

- a) On-Site Services. Miltenyi will dispatch a field service engineer to the location of the Covered Equipment within the agreed response times to perform the Services at the Site. Miltenyi will provide all tools and equipment required to provide the Services. Miltenyi will schedule with Customer a time slot for the field service engineer to arrive at the Site. If the field service engineer is not granted access to the Covered Equipment at the appointed time slot, any further On-Site visits may be subject to additional charge.
 - b) Return-to-Depot Service. The Covered Equipment may be required to be returned to Miltenyi or an Authorized Service Provider. Miltenyi will arrange the pick-up and the transport of the Covered Equipment from the Site to Miltenyi or a Miltenyi Authorized Service Provider. Upon Miltenyi's request, Customer shall prepare the Covered Equipment for pick-up. Once the Services have been provided, the Covered Equipment will be returned to Customer. Transport of the Covered Equipment to depot and return will be arranged by at Miltenyi's expense and risk. If agreed by the Parties in writing, Miltenyi may supply Customer with adequate loaner equipment for the time the Covered Equipment is returned to depot. The loaner equipment is to be returned to Miltenyi within fifteen (15) days after: (i) expiration or termination for any reason of this Agreement, (ii) return of Covered Equipment at Customer's Site, and/or (iii) Miltenyi's written request to do so. The loaner equipment must be returned in its original packaging and in the same condition, subject to fair wear and tear, as it is delivered. Any material and documentation supplied with the loaner equipment must be returned without alteration. In case of late return, Miltenyi is entitled, in addition to all other remedies available under the Agreement or at law or equity, to charge a late return rental fee equal to one percent (1%) of Miltenyi's recommended retail price of the loaner equipment for each calendar day (or portion of a day) the return is late, provided however that such fee, in the aggregate, will not exceed the full recommended retail price of the loaner equipment. If not otherwise agreed by the Parties, transport of the loaner equipment to the Site and its return shall be at Customer's risk and expense.
 - c) Customer Self-Service. Miltenyi may determine that Customer can repair a defect in the Covered Equipment using a replacement product or spare part. In such case, Miltenyi will dispatch the replacement product or spare part to Customer with instructions on how to perform the repair. Miltenyi reserves the right to require Customer to return the replaced product or spare part to Miltenyi at Miltenyi's expense. Should Customer fail to return a replaced product or spare part, as requested, Miltenyi may charge the retail cost of the replacement product or spare part.
- 4.6. No Fault Found. If, in Miltenyi's sole discretion, repair Services have been requested by Customer when no error or defect of the Covered Equipment could be found, Miltenyi reserves the right to charge Customer based on Miltenyi's applicable time and material hourly rates.
- 4.7. Additional Services. Miltenyi shall only provide Additional Services that are not listed in Attachment A if agreed by the Parties in a Change Order.

5. REPLACEMENT AND SPARE PARTS

- 5.1. If the Services requires the replacement of spare parts, where Customer owns the applicable Covered Equipment, the title in such replacement of spare parts shall pass to the Customer upon full payment of the Service Fees. Unless otherwise agreed by the Parties, the risk for such spare parts shall pass to the Customer after delivery to Customer's Site.
- 5.2. Spare parts may be replaced by new manufactured, reconditioned, refurbished or serviceable used parts. The replacement parts will be functionally equivalent to the replaced spare parts and will assume the remaining coverage of the Agreement. Where spare parts of the Covered Equipment have been replaced, title in the replaced spare parts will pass to Miltenyi upon removal from the Covered Equipment.

6. OUTDATED EQUIPMENT

Equipment and instruments are considered outdated if they have been out of production for five (5) or more years. When servicing outdated equipment and/or instruments, Miltenyi reserves the right to only provide the Services that are commercially reasonably available for outdated equipment and/or instruments. If the provision of Services is unreasonable, either Party may terminate this Agreement in whole or only with respect to the applicable outdated Covered Equipment as per Section 15.2. Miltenyi will inform Customer in advance if the Covered Equipment becomes outdated during the Initial Term or any Renewal Terms.

7. RELOCATION OF EQUIPMENT

- 7.1. Customer shall inform Miltenyi with sixty (60) days prior written or email notice about any relocation of the Covered Equipment. The scope of the Services, the Service Fees, deadlines and schedules are subject to change upon such a relocation. Additional Services may be required. Customer shall only be entitled to receive Services for relocated equipment if the Parties have agreed and executed a Change Order to adjust scope of Services, Service Fees and other terms of the Agreement. Without a signed Change Order, Miltenyi is entitled to suspend the Services. For the avoidance of doubt, Customer shall re-

main responsible to obtain any required permission, approval or license from governmental or regulatory bodies and authorities, required for the relocation.

- 7.2. If any Covered Equipment has been relocated without Miltenyi's authorization, Miltenyi may suspend Services provision until the execution of a respective Change Order or terminate the Agreement immediately as per Section 15.2.

8. SOFTWARE UPDATES

- 8.1. Software updates may be required for Service provision and will be provided by Miltenyi under this Agreement where deemed necessary in Miltenyi's sole discretion. Software updates may include either minor modifications, e.g. error correction, security patches, smaller improvement of software features and functions, and/or major modifications, e.g. new versions of the software, with material enhancement of software performance, material new features, modules and functions. Miltenyi will install and support the latest or next to latest release version of software embedded in the Covered Equipment. If the Covered Equipment is not compatible with the latest or next to latest release version, e.g. because the Covered Equipment is outdated, Miltenyi will apply commercially reasonable efforts, subject to Section 6, to support the latest software version available for the Covered Equipment.
- 8.2. Customer is responsible for the compatibility of the Covered Equipment with software programs offered and provided by Miltenyi. Upgrades of firmware or hardware, e.g. newer versions of the hardware, are not subject of this Agreement but may be purchased by Customer via separate order.

9. CUSTOMER'S OBLIGATIONS

- 9.1. Customer will ensure that Miltenyi's and/or Authorized Service Provider's personnel or representatives have full and safe access to the Covered Equipment at agreed times for the purpose of providing Services, and will ensure that while performing Services, Miltenyi has permission to access and use the Covered Equipment and any necessary third party equipment. Customer shall further ensure that Miltenyi's and/or Authorized Service Provider's personnel or representatives are provided a safe and secure work environment while they are on Site to provide the Services.
- 9.2. Customer will retain the Agreement, the original purchase or lease agreement for the Covered Equipment, and any other original sales receipt(s) for the Covered Equipment to verify eligibility for Services coverage. If Customer is not the owner of the Covered Equipment, Customer shall obtain prior authorization from the owner to have Miltenyi provide the Services in regard to the Covered Equipment and, upon Miltenyi's request, provide, in Miltenyi's reasonable opinion, sufficient written evidence.
- 9.3. Customer agrees to cooperate with and follow instructions provided by Miltenyi, and where applicable, before Services are provided: (i) follow the problem determination, problem analysis, and Service request procedures provided by Miltenyi including, without limitation, assisting Miltenyi diagnose or replicate an issue; and (ii) secure all data (e.g. user profiles) stored in the Covered Equipment and maintain a complete back-up.
- 9.4. Upon request, Customer shall provide Miltenyi and/or any Authorized Service Provider all information which Miltenyi and/or Authorized Service Provider determine to be necessary for Service provision. In particular, if required, Customer shall grant Miltenyi and/or Authorized Service Provider access to any records regarding the use or performance of the Covered Equipment. Customer will ensure that any information or data disclosed to Miltenyi is not confidential or proprietary to it or any third party.
- 9.5. Customer is responsible for all fees in establishing and maintaining mail, facsimile, email and/or telephone communication with Miltenyi and/or an Authorized Service Provider.
- 9.6. The fulfillment of Customer's obligations shall be considered conditions precedent to Miltenyi's proper performance and provision of the Services. For the avoidance of doubt, Miltenyi shall not be responsible or liable for any delays in Service provision caused by Customer's failure to fulfill its obligations as provided in this Agreement in a timely manner. Miltenyi is entitled to suspend the Services until Customer complies with Customer's obligations.

10. SERVICE FEES, PAYMENT TERMS.

- 10.1. Service Fees. As consideration for the Services, Customer shall pay to Miltenyi the Service Fees, as specified in the Agreement, including, without limitation, any other fees and charges for Additional Services rendered to Customer under related Change Orders.
- 10.2. Miltenyi reserves the right to change the Service Fees with effect with the beginning of the next Renewal Term. Miltenyi will notify Customer in writing or via email of such adjustment or change no later than three (3) months prior to the expiry of the Initial Term or then-current Renewal Term. Customer may object to the increase within fourteen (14) calendar days after receipt of Miltenyi's notification in which case the Agreement shall terminate at the end of the Initial Term or then-current Re-

newal Term. If Customer does not object within such time frame, the adjusted or changed Service Fees shall be deemed accepted and effective with the beginning of the next Renewal Term. In its notification, Miltenyi will inform Customer about the right to object and the consequences.

- 10.3. Taxes. Customer shall be responsible for any and all applicable taxes, customs, duties, use, excise, sales and value-added taxes, tariffs or withholding taxes (collectively, "Taxes") imposed as a result of the transactions contemplated by this Agreement but shall not be responsible for taxes based on Miltenyi's income. Miltenyi shall invoice Customer for any Taxes payable by Customer that Miltenyi is required to collect and remit to the applicable authorities. If Customer is required by applicable law to make any tax deduction, withholding or payment from any amount paid or payable by Customer to Miltenyi under this Agreement, the amount paid or payable to Miltenyi shall be grossed-up to the extent necessary to ensure that Miltenyi receives and retains, free of liability, a net amount that Miltenyi would have received and retained had no tax deduction or withholding been made.
- 10.4. Payment Terms. All Service Fees as described in this Agreement are payable in advance. Payments on all invoices are due net thirty (30) days from the date of Miltenyi's invoice. In the event that Miltenyi does not receive any payment when due, the Customer shall pay to Miltenyi as a late charge and not as a penalty, interest on the unpaid balance from the due date until payment is actually received by Miltenyi, at the lesser of (a) the rate of one and a half percent (1.5%) per month or (b) the highest rate permissible under applicable law, calculated daily and compounded monthly. Any payment received by Miltenyi may be applied by Miltenyi first to any outstanding interest due and then to any outstanding balance owed by the Customer to Miltenyi, determined by Miltenyi in its sole discretion.
- 10.5. Remedies in the Event of Failure to Pay. Miltenyi shall not be required to perform the Services (or any portion thereof) and may suspend the Services in whole or in part unless the Service Fees and any outstanding balances owed to Miltenyi are paid in full. If invoiced Service Fees are not paid when due, Miltenyi shall provide written overdue notice to Customer. If the past due payment is not received in full by Miltenyi within thirty (30) days of the date of such notice, then Miltenyi shall have the right to terminate this Agreement as per Section 15.2.

11. CONFIDENTIALITY

- 11.1. In connection with the Services, Miltenyi and Customer (as to information disclosed, each a "Disclosing Party") may each provide the other Party (as to information received, each a "Receiving Party") with Confidential Information.
- 11.2. Receiving Party agrees: (a) not to use Confidential Information except as necessary to exercise the rights herein, (b) not to disclose any Confidential Information to any third parties, including, without limitation, a competitor of Disclosing Party, and (c) to take reasonable measures to prevent unauthorized disclosure of the Confidential Information. Notwithstanding these restrictions, (i) Miltenyi may disclose Confidential Information to its Affiliated Companies and subcontractors in connection with performance of the Services, (ii) the Receiving Party may disclose Confidential Information to its auditors, consultant and employees on a need-to-know-basis and if required for the purposes of this Agreement, and (iii) the Receiving Party may disclose Confidential Information to third party with the prior written permission of Disclosing Party, in all cases provided the Receiving Party imposes a similar, binding confidentiality obligation on the permitted receiving third parties, and provided that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information.
- 11.3. The obligations under this Section 11 shall not apply to any portion of the Confidential Information that: (a) is or becomes generally available to the public, without a breach of a confidentiality obligation; (b) is or becomes available to Receiving Party through a third party source, provided such source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; or (c) is independently developed by Receiving Party, its representatives or Affiliated Companies, without reference to the Confidential Information.
- 11.4. The Receiving Party may disclose the Disclosing Party's Confidential Information under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction, provided that the Receiving Party shall first, to the extent permitted by law, provide the Disclosing Party with: (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance (when permitted), the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.
- 11.5. Each Disclosing Party warrants that it has the right to disclose the information that it discloses hereunder. Neither Customer nor Miltenyi shall make any public announcement about the Agreement, or otherwise use the other Party's trademarks, service marks, trade names, logos, symbols, or brand names, without prior written approval of the other Party. As to any individual item of Confidential Information, the restrictions under this Section 11 shall expire seven (7) years after the date of disclosure provided, however, that the restrictions under this Section 11 shall continue with respect to Confidential Infor-

mation that constitutes trade secrets until such time as such Confidential Information remains a trade secret under applicable law.

- 11.6. The provisions of this Section 11 does not supersede any separate confidentiality or nondisclosure agreement in effect between the Parties applying to or covering the subject matter hereof.

12. DATA PROTECTION

- 12.1. Each party shall comply with their respective obligations under applicable data protection legislation.
- 12.2. During the Service provision Miltenyi may collect, process and use personal data of Customer. In regard to personal data of Customer's employees, service providers, users or any other person acting on behalf of Customer and to the extent required to execute this Agreement and to provide the Services, Miltenyi collects and processes such personal data as data controller in accordance with Miltenyi's Privacy Statement, to be found at www.miltenyibiotec.com/privacy.
- 12.3. Miltenyi does not intend to have access to any other personal data of Customer, and Customer is requested not to store or upload any personal data (including but not limited to any third party personal data) on the Covered Equipment or make such data otherwise available to Miltenyi. To the extent Miltenyi has access to such data, such access will likely be incidental and Customer shall remain the data controller of such personal data at all times. However, if the Parties determine that the Service provision requires Miltenyi to have access to personal data, the Parties will enter into an appropriate data processing agreement, as required by applicable laws.
- 12.4. Non-personal data. Miltenyi may collect and process non-personal, aggregated or anonymous data for business purposes, including, without limitation, to improve the functionality of Services and the Customer' experience with the Services, and as permitted by applicable laws.

13. LIMITED WARRANTY

- 13.1. Miltenyi warrants for a period of twelve (12) months after performance of any Service that the Services will be provided in a professional, workmanlike manner and in due care, consistent with generally prevailing industry standards and applicable laws. UNLESS SPECIFIED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY LAW, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER WRITTEN OR IN ORAL, ARE DISCLAIMED. In particular, Miltenyi does not guarantee or warrant that serviced Covered Equipment (i) will be or remain fit for Customer's intended purposes, or (ii) will be or remain eligible to be approved by any regulatory authority for clinical use and/or manufacturing use.

14. LIMITATION OF LIABILITY

- 14.1. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL MILTENYI BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.2. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL MILTENYI'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE SERVICE FEES PAID OR PAYABLE TO MILTENYI IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- 14.3. THE EXCLUSIONS AND LIMITATIONS IN SECTION 14.1 AND SECTION 14.2 SHALL NOT APPLY TO:
- 14.3.1. DAMAGES OR OTHER LIABILITIES ARISING OUT OF OR RELATING TO MILTENYI'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER SECTION 11 (CONFIDENTIALITY);
- 14.3.2. DAMAGES OR OTHER LIABILITIES ARISING OUT OF OR RELATING TO MILTENYI'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR INTENTIONAL ACTS; AND
- 14.3.3. DEATH OR BODILY INJURY OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY RESULTING FROM MILTENYI'S NEGLIGENT ACTS OR OMISSIONS.

15. TERM, TERMINATION

- 15.1. Term of Agreement. This Agreement shall enter into force on the Effective Date and remain in effect until completion of the Initial Term. Thereafter, the Agreement shall automatically renew for the Renewal Term(s), as specified in the Service and Support Agreement, unless either Party serves not less than three (3) months written notice to terminate prior the expiry of such Initial Term or any Renewal Term.
- 15.2. Either Party may terminate the Agreement immediately upon written notice to the other Party if:
- a) Situations, as described in terms and conditions within these Terms, referring to Section 15.2;
 - b) the other Party's failure to cure its material breach of this Agreement within fifteen (15) days delivery of written notice of the breach issued by the terminating Party;
 - c) a Party is prevented by Force Majeure Events from complying with this Agreement for more than three (3) months; or
 - d) the other Party (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 15.3. No Refunds. Upon termination or expiration of this Agreement for any reason, Customer shall not be entitled to any refund of Service Fees paid or due to Miltenyi.
- 15.4. Survival. The rights and obligations of the parties set forth in this Section 15.4 and Sections 1, 11, 14, and 16, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

16. GENERAL

- 16.1. Supported Languages. All Service reports, records and documents will be provided in English. Miltenyi will use commercially reasonable efforts, without any legal obligation, to offer the Services in additional languages.
- 16.2. Force Majeure. No Party shall be responsible for any failure to perform or for any delay in performance of its obligations, except to the obligation of payment, under this Agreement where the failure or delay is due to unforeseeable, irresistible or inevitable circumstances beyond the reasonable control of that Party, including, without limitation, war, fire, flood, earthquakes, pandemic, endemic, terrorism or terrorist act, civil unrest, strikes, lockouts or other labor disturbances, omission of carriers, failure or interruption of a third party internet connection(s) or infrastructure (collective, "Force Majeure Events").
- 16.3. Use of Services. The Services covered under this Agreement are intended to support Covered Equipment that is being used in a commercial environment (B2B) only.
- 16.4. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- 16.5. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 16.6. Notice. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated in the Service and Support Agreement (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 16.6).
- 16.7. No Setoff. Each Party shall perform its obligations under this Agreement without setoff, deduction, recoupment, or withholding of any kind for amounts owed or payable by the other Party whether under this Agreement, applicable law, or otherwise and whether relating to the other Party's breach, bankruptcy, or otherwise.
- 16.8. Assignment. Customer shall not directly or indirectly assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger (whether or not Customer is the surviving entity), operation of law, or any other manner, without the prior written consent of Miltenyi. Any purported assignment or delegation in violation of this Section 16.8 shall be null and void. No assignment or delegation shall

relieve the Customer of any of its obligations under this Agreement. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

- 16.9. Additional Rights to Warranty. This Agreement is not a warranty for the Covered Equipment. The Covered Equipment may come with a limited warranty from Miltenyi. It is Customer's responsibility to review the terms of the warranty to identify the rights and remedies contained therein. The rights provided under the Agreement are additional to those contained in the Covered Equipment's warranty.
- 16.10. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 16.11. Severability. If a court of competent jurisdiction holds that any provision of this Agreement, including these Terms and Conditions, is invalid, illegal, or unenforceable, the remaining portions will remain in full force and effect, and the Parties will negotiate in good faith to replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 16.12. Amendments. Except as permitted under and in accordance with Section 2.5, no amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.
- 16.13. No Export. Customer may not use or otherwise export or re-export the Services except as authorized by United States law and the laws of the jurisdiction in which the Services are obtained.
- 16.14. Governing Law; Forum. This Agreement and all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California. Subject to the following sentence, each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than the federal or state courts located in San Diego County, California, and any appellate court from any thereof, and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the federal or state courts located in San Diego County, California. Notwithstanding the foregoing sentence, Miltenyi shall have the right, at its own discretion, to also bring an action against the Customer in the federal or state courts located in the state of Customer's incorporation/organization, the Customer's place of business, or at the place of performance of the obligation according to the Agreement or any other agreement between the Parties. Each Party agrees that a final judgment in any such action, litigation, or proceeding brought in accordance with this Section 16.14 is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The U.N. Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.
- 16.15. Statute of Limitations. Customer must file any action arising directly or indirectly from this Agreement no later than one year after the claim has accrued. Customer waives the right to file an action arising directly or indirectly from this Agreement under any longer statute of limitations.
- 16.16. Complete Agreement. This Agreement including any additional terms referenced herein constitute the entire agreement between Miltenyi and Customer with regard to the Services provided hereunder and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter, and no addition to or deletion from or modification of any of the provisions hereto shall be binding upon Miltenyi unless made in writing and signed by an authorized representative of Miltenyi. Any term or condition on any order or other document submitted by Customer shall be of no force or effect whatsoever, and is specifically rejected.
- 16.17. Execution. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 16.6, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 16.18. Hierarchy: In the event of any conflict between the provisions of the contractual documents of this Agreement, the order of precedence is as follows: (i) the Service and Support Agreement, (ii) the Service and Support Terms and Conditions (Attachment B), (iii) the Service Plan (Attachment A).

[END OF DOCUMENT]