

Annex 'Maintenance Service Agreement Terms and Conditions'

Version 1.0 / 15-Dec-15

Definitions

- 'Our Personnel': refers to employees of Bruker and its designated contractor or agent.
- 'Initial Attempt': means Bruker will try up to a maximum of 3 times to energize the magnet and to meet the original specifications in terms of persistent field strength, drift, homogeneity and cryogen boil-off rate. If this fails, the magnet is deemed to have a Catastrophic Magnet Fault.
- 'Catastrophic Magnet Fault': refers to the situation where the magnetic field or other relevant specification can no longer be restored to the original specifications and the Initial Attempt has failed.
- 'Routine Maintenance': Maintenance activity that an operator needs to undertake daily, weekly or monthly for ensuring good routine operation of the instrument. Routine Maintenance is typically described in the user or operator manual.
- 'Planned Maintenance': Maintenance activity on the instrument that needs to be performed by certified trained Bruker personnel on a planned or scheduled interval.

1 General Information

All maintenance plans sold by Bruker are subject to these terms and conditions. Bruker's obligations under all maintenance plans are limited in accordance with the periods of time and all other conditions stated in these terms and conditions. In case of a conflict, inconsistency or addition not expressly accepted in writing by Bruker, these terms and conditions shall be considered as superseding the conflicting, inconsistent or additional terms stated in Customer's purchase order, order form, contract or otherwise. The acceptance of a quotation by Customer subject to these terms and conditions will supersede all prior communications and constitute a complete and binding contract between Customer and Bruker, which contract cannot be modified or canceled without the written agreement of both parties.

2 Quotation Acceptance and confidentiality

2.1 Acceptance

Bruker requires that the following elements are clearly stated in the quotation acceptance:

1. Authorized signature
2. One primary contact for general communication and one billing contact
3. Complete billing address
4. The quotation reference and a statement of the plan purchased
5. Total amount of purchase in the same currency as the quotation

2.2 Confidentiality

These terms and conditions, the quotation and other related documents shall neither be passed on or communicated (directly or indirectly) to third parties nor copied unless Bruker explicitly agrees in writing.

3 **Replacement and Adjustments**

All Customer claims for support must be made within four hours (receipt by Bruker being decisive) after the occurrence of circumstances giving rise thereto. Such claims should include the product type and serial number, and a full description of the circumstances giving rise to the claim. Bruker reserves the right at its sole discretion to determine whether to handle valid claims by:

1. Sending a field service engineer to the site;
2. Requesting that the Customer send the defective part, assembly or instrument to a service shop or facility designated by Bruker; or
3. Authorizing the Customer to return the item to Bruker.

Prior to return of any products, parts or assemblies to Bruker (or its agent) for repair, exchange or adjustment, authorisation must be obtained from Bruker together with instructions regarding packaging and shipment. Returned items must be certified to be free of any toxic, biological, chemical or radioactive contamination and if necessary evidence provided that any necessary cleaning and decontamination procedures have been carried out. In case of doubt, Bruker reserves the right to reject the return.

Any product, part, or assembly sent to an authorized service shop or facility or returned to Bruker for examination shall be sent prepaid via the means of transportation indicated as acceptable by Bruker. Bruker reserves the right to reject any claim not promptly reported and any claim on any item that has been altered or has been shipped by non-acceptable means of transportation. When any product, part, or assembly is sent to a service shop or facility or is returned to Bruker for examination and inspection, or for any other reason, Customer shall be responsible for all damage resulting from improper packing or handling, and for loss in transit, notwithstanding any defect or non-conformity in the product, part, or assembly. In all cases, Bruker has sole responsibility for determining the cause and nature of failure and Bruker's determination with regard thereto shall be final.

4 **Specific Conditions**

4.1 **Conditions that apply to the LabScape Connect Plan**

4.1.1 **Bruker Responsibilities**

Bruker commits to:

- In the event of a catastrophic loss of the magnetic field (quench), Our Personnel will make an Initial Attempt. If necessary the magnet will be vacuum pumped (the equipment will be provided by Bruker) and cooled to operating temperature by Our Personnel. The liquid helium required for this process IS included. The liquid nitrogen and gas helium is NOT included. Our Personnel will energize and shim or cryo-shim the magnet to specification. Our Personnel will room temperature shim all Bruker manufactured probes covered under these terms and conditions to Bruker's standard proton line-shape specification. If requested, room temperature shimming for additional Bruker manufactured probes can be provided at normal service rates.
- Assist in installing the appropriate software that applies to Customer's configuration.
- Install the appropriate firmware updates as required.
- Ensure Customer receives qualified remote desktop support as soon as possible after a request for support has been made and an initial investigation over telephone or email has not resolved the issues.
- Bruker will continually verify the connection between the instrument and the Bruker server. If no connection can be established Customer shall be informed based on the defined contact list. If after notifying the contact persons an interruption of monitoring lasts longer than 5 days without Bruker's fault, Bruker will void its contractual obligations.
- In the case of a Catastrophic Magnet Fault Bruker will continue to assist Customer and will, at Customer request, make further attempts at the applicable hourly rates of Bruker. A magnet replacement is NOT included.
- This plan does not cover any damage caused from objects impacting the magnet. Customer should take reasonable steps to keep ferromagnetic objects at a safe distance from the magnet.

4.1.2 **Customer Responsibilities**

Customer commits to:

- Connect the covered equipment to the internet and guarantee that any security settings are adapted to allow communication.
- Ensure that the appropriate software is installed and running on the system as required.
- Ensure that the appropriate instrument location is defined in the monitoring software
- Regularly update and maintain a correct list of contact persons on the instrument as described in the operator or user manual.

4.2 **Conditions that apply to the LabScape Essential Plan**

All responsibilities of LabScape Connect apply.

4.2.1 **Bruker Responsibilities**

Bruker commits to:

- Perform Planned Maintenance as described in Bruker's maintenance documentation.
- Repairs can be performed at the same time as the maintenance if both parties agree to do so.
- Operation qualification and full test reports shall be made available to Customer.
- In case of magnets consuming liquid helium, Bruker shall supply liquid helium and perform helium refills.
- Maintain a system to track the Planned Maintenance visits due for the instrument.
- Inform Customer of the approximate schedule for the visits.
- Review the results of each Planned Maintenance visit with the primary user of the covered instrument.
- File the results of each Planned Maintenance visit in the instrument log.

4.2.2 **Customer Responsibilities**

Customer commits to ensure the primary user is available for review after the maintenance has been executed.

4.3 **Conditions that apply to the LabScape Comprehensive Plan**

All responsibilities of LabScape Connect and LabScape Essential apply.

4.3.1 **Bruker Responsibilities**

Bruker commits to:

- Provide all on-site service support for hardware repair as necessary.
- In case of a Catastrophic Magnet Fault, Bruker will repair or
 - In case the instrument has always been covered by a **LabScape** Comprehensive plan that follows seamlessly after warranty expiry or expiry of a preceding **LabScape** Comprehensive plan, replace the magnet with a model of equivalent specifications and carry all the costs related to reinstatement of the hardware including, without limitation, travel and labour.
 - In case the instrument has NOT always been covered by a **LabScape** Comprehensive plan or warranty, cover the magnet up to its time value, based on an expected magnet lifetime of 20 years.

In all cases, costs due to inaccessibility of the installation location to replace the system are explicitly excluded (e.g., Bruker will not break down walls to remove and replace a system and then build it up again).

4.3.2 **Customer Responsibilities**

There is no additional Customer commitment required.

4.4 Conditions that apply to the LabScape Select Agreement

Where options for specific modules are selected that include the benefits and responsibilities as described under LabScape Connect, LabScape Essential or LabScape Comprehensive and are noted as such, the relevant terms and conditions as described above shall apply.

5 Service Response

5.1 Local Service support

All reasonable effort will be made to provide support from Bruker's technical response facility at the Bruker office. All reasonable effort will be made to offer support in the local language but this may not be possible in all cases so alternative support languages will be offered.

5.2 Service response process - Standard

The following process will be used to facilitate tracking and monitoring of the calls:

1. Upon receiving a Customer request for support, Bruker will create a computer record of the request on Bruker's service response tracking system. This record of a call is called a service request. Responsibility for the service request will be assigned within Bruker, and the service request will remain 'open' until the Customer request is satisfied.
2. Bruker will contact the Customer to gain a more complete understanding of the request, recommend diagnostic tests and, with the Customer, interpret the results.
3. For calls received before 12:00 noon (time zone of the designated Bruker office location), contact will be attempted prior to the end of the business day. (For tracking purposes, this is day #0.) For calls received after 12:00 noon (time zone of the designated Bruker office location), the contact will be attempted prior to 12:00 noon on the following day (this then becomes day #0). In either case, if telephone contact cannot be made, a message will be left and/or an email message will be sent.
4. If the diagnostic tests indicate that an on-site intervention is required, Bruker will assign an engineer within 24 hours and provide for the overnight shipment of parts. Under LabScape Comprehensive this service is free of charge. In the case of all other plans, Customer must cover the cost of the parts plus shipping and handling and Bruker's estimated labour charge prior to the shipment of the part and the assigning of an engineer.
5. If the intervention resolves the problem, the service request will be closed upon receipt of the defective material.
6. If the replacement material did not resolve the problem, Points 4 and 5 will be repeated until such time as the matter is fully resolved.
7. When the Customer request has been resolved, the service request will be closed.

5.3 Service response process – For remote locations

The following process will be used to facilitate tracking and monitoring of calls in case Customer is in a remote location. A remote location is defined as being over 4 hours one-way travel to the Customer location from the nearest Bruker engineer location.

1. Upon receiving a Customer request for support, Bruker will create a computer record of the request on Bruker's service response tracking system. This record of a call is called a service request. Responsibility for the service request will be assigned within Bruker, and the service request will remain 'open' until the Customer request is satisfied.
2. Bruker will contact the Customer to gain a more complete understanding of the request, recommend diagnostic tests and, with the Customer, interpret the results.
3. For calls received before 12:00 noon (time zone of the designated office location), the contact will be attempted prior to the end of the business day. (For tracking purposes, this is day #0.) For calls received after 12:00 noon (time zone of the designated office location), the contact will be attempted prior to 12:00 noon of the following day (this then becomes day #0). In either case, if telephone contact cannot be made, a message will be left and/or an email message will be sent.
4. If the diagnostics indicate that material is required and Customer has an appointed Bruker Maintenance Correspondent (see Section 5.4), Bruker will arrange for overnight shipment. For LabScape Comprehensive this service is free of charge. In case of any other plan Customer must cover the cost of the parts plus shipping and handling prior to the shipment of the part. If no Bruker Maintenance Correspondent is available the process will continue from point 8.

5. The next day Bruker will contact Customer to determine the status of the instrument. (For tracking purposes, this is day #1.)
6. If the replacement material resolved the problem the service request will be closed upon receipt of the defective material.
7. If the replacement material did not resolve the problem an on-site visit will be planned.
8. Bruker will organize on-site service. In the case of LabScape Comprehensive this service is free of charge. In the case of all other plans, Customer must cover the estimated cost of any additional parts plus shipping and handling and Bruker's estimated labour charge prior to the shipment of the part and the dispatching of the engineer.
9. When the Customer request has been resolved, the service request will be closed.

5.4 Bruker Maintenance Correspondent

Training to become a Bruker Maintenance Correspondent is only available in selected areas and the date and location are defined by mutual agreement. This training will only be valid for a maximum of 2 years after which a renewal or refresher course will be required. If the system configuration changes by means of adding new versions of modules, earlier refresher training is mandatory.

The above usually applies in the rare occasion when Customer is located more than 4 hours one-way travel time from the nearest Bruker engineer location. Customer may nominate a suitable member of staff to be trained so that this person is able to:

- Identify the modules and sub-assemblies of the instrument by name.
- Work safely (personal safety, safety of the instrument and safety of all associated colleagues and co-workers) on corrective maintenance tasks as defined in level 1 and level 2 operations.
- Reduce the time required to obtain a problem diagnosis with assistance of Bruker.

Confidentiality strictly applies to any information given or released during the training or during events that follow the training.

6 General Terms and Conditions

6.1 General Conditions

- The Labscape Service Agreement, these terms and conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Labscape Service Agreement, these terms and conditions or its subject matter or formation (including non-contractual disputes or claims).
- For the avoidance of doubt, the U.N. Convention on Contracts for the International Sale of Goods is not applicable to the Labscape Service Agreement.
- Bruker shall retain copyright, trademark, patent and any other intellectual or other proprietary rights in all software, firmware, drawings, technical information and know-how. Customer will not disclose to a third party any information obtained from Bruker without Bruker's prior written consent.
- In the event that Customer breaches any of these terms and conditions, in addition and without prejudice to any other remedy Bruker may have, it may discontinue all service to Customer with immediate effect and terminate the Labscape Service Agreement.
- Documentation such as software listings, detailed drawings and other documentation normally not distributed may only be provided by Bruker on the condition that the receiver of such documentation signs a separate confidentiality agreement on terms satisfactory to Bruker.
- Clerical errors and mistakes of fact are subject to correction by Bruker at any time, without liability on the part of Bruker.

6.2 Price and Quotation

- Invoices issued by Bruker are payable by the Customer in the currency and in the manner set forth in Bruker's invoice. Any exchange charges, any charges for non-par clearance of checks or collection charges (including reasonable attorneys' fees) will be paid by Customer.

- If Customer fails to make any payment due to Bruker under the LabScape Service Agreement by the due date for payment, then, without limiting Bruker's other remedies hereunder or at law, the parties acknowledge and agree that:
 - the Late Payment of Commercial Debts (Interest) Act 1998 applies to the LabScape Service Agreement;
 - statutory interest applies to each qualifying debt, being each debt constituted by an obligation to pay the price pursuant to the LabScape Service Agreement; and
 - for the purposes of section 4 of the Act, interest runs on a qualifying debt from the day after the due date for payment as specified by this Agreement.
- In the event that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to the LabScape Service Agreement, the parties agree that interest and debt recovery costs shall be recoverable by Bruker in the same amount and in accordance with the same principles as if the Payment of Commercial Debts (Interest) Act 1998 did apply. Interest in such circumstances shall be compounded monthly in arrears and payable at this rate both before and after any judgment is made against the Customer until the date on which payment in cleared funds is received in full, including all accrued interest.
- All amounts payable under the LabScape Service Agreement shall be exclusive of VAT and any other applicable sales tax, which shall be paid at the rate and in the manner for the time being prescribed by law.
- All amounts due under the LabScape Service Agreement shall be paid by Customer to Bruker in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- All prices are EXW Bruker unless explicitly stated otherwise in the quotation.
- Bruker may suspend its contractual obligations as long as overdue payments are outstanding or may terminate with immediate effect.

6.3 Availability and Supply of Liquid Helium

- Liquid helium is a non-renewable natural resource available from a limited number of suppliers worldwide. Bruker has purchase agreements with large suppliers and will make every reasonable effort to guarantee its supply, even during periods of worldwide shortages; however, Bruker cannot be held liable if it cannot provide this service when helium is not available for reasons beyond Bruker's control.
- Liquid helium is a scarce commodity whose price is highly volatile. If its wholesale price changes by more than 15%, Bruker reserves the right to adjust its prices. This price change will be reported to Customer.

6.4 Continual improvement

Bruker reserves the right to modify and update any of its operator, user and service manuals or service checklists.

6.5 Limitation of Liability

- 6.5.1 Reasonable care must be used to avoid hazards. Bruker expressly disclaims responsibility for loss or damage caused by use of its products other than in accordance with proper operating procedures.
- 6.5.2 All obligations of Bruker shall cease in the event its products or parts have been subject to accident, abuse, alteration, misuse or neglect, or have not been operated and maintained in accordance with proper operating procedures. All products and services must be provided through or with the knowledge and approval of Bruker. Bruker makes no warranty concerning services or components supplied through unapproved sources. What constitutes an approved source shall be determined solely by Bruker.
- 6.5.3 Without prejudice to Section 6.5.4:
 - (a) Bruker shall not be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
 - (i) loss of profit; or

- (ii) loss of goodwill; or
- (iii) loss of business; or
- (iv) loss of business opportunity; or
- (v) loss of anticipated saving; or
- (vi) loss or corruption of data or information; or
- (vii) special, indirect or consequential damage or loss

suffered by the Customer that arises under or in connection with the LabScape Service Agreement.

- (b) the aggregate liability of Bruker under or in connection with the LabScape Service Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in no circumstances exceed a sum equal to the price payable by Customer in respect of the unit or service or product furnished or the purchased plans, as the case may be, which is the subject of the claim or dispute.

6.5.4 Nothing in the LabScape Service Agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury caused by its negligence or that of its officers, employees, contractors or agents (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its officers or employees;
- (c) breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 Supply of the Goods and Services Act 1982; or
- (d) any other liability to the extent that it cannot be limited or excluded by law.

6.5.5 No action, regardless of form, arising out of, or in any way connected with, the products or services furnished or to be furnished by Bruker may be brought by Customer:

- (a) against any officer, agent, employee or representative of Bruker; or
- (b) more than one (1) year after the cause of action has accrued.

6.6 ***Bruker Responsibilities***

Bruker commits to:

- Provide the applicable coverage for the respective LabScape Plan as described in Section 4 above for the covered instruments through Our Personnel.
- Provide telephone support for the diagnosis of covered instruments malfunction(s). This support will be provided in addition to the service described in Section 5 above and only during normal office hours and during Bruker's standard working week unless explicitly agreed otherwise.
- Send competent personal that are suitably qualified.
- All service and support, including the service described in Section 5 above, will take place during normal office hours as presented on Bruker's website (www.bruker.com) unless explicitly agreed otherwise.
- Follow on-site safety measures and processes that are defined by Customer.
- Maintain an inventory of the most common parts for use in service.
- Our Personnel will hold in confidence and not disclose any information obtained which is designated by Customer as confidential or proprietary.
- Provide replacement parts as required on an exchange (refurbished) or new part basis at Bruker's discretion.

- Pay travel costs for Bruker service personnel except as provided herein.
- Bruker may determine that some changes to the covered instruments are mandatory for the safety of the instruments or the persons operating or otherwise using the instruments. These will be installed at no additional charge by Our Personnel.

6.7 Customer Responsibilities

Customer commits to:

- Maintain the site and environment in a condition suitable for operation of the covered instrument.
- Make normal operator adjustments to the instrument as specified in the Operator Manual.
- Monitor the cryogen levels if the system has cryogenes and take appropriate actions as described in the operator or user manual.
- Perform required routine maintenance activities as described in the Operator Manual.
- Immediately notify Bruker of problems or unexpected behaviour with the covered instrument.
- Make the instrument available, without restriction, for service within the service times (working hours of Bruker as specified in Section 6.6 above). If Bruker is unable to gain this type of access at the agreed time, any makeup service may be separately billed by Bruker at its applicable rate, including round trip travel time and expenses.
- Provide adequate working space and facilities, including heat, light, ventilation, electric current outlets, and the like to be used by Bruker. All such facilities shall be in the immediate proximity of the equipment to be serviced and shall be provided at no charge.
- Provide an appropriate delivery dock and storage facility as specified in Section 6.14, and assist with moving any materials from the dock to the site of the covered instrument (and back) in a timely manner.
- Return any defective items and/or our equipment used in repair within 20 days of shipment of a replacement part to Customer's site. The material will be returned to Bruker using shipping information and pre-paid labels included with the repair items.
- Notify Bruker of any non-mandatory modifications or changes to the instrumentation that Customer does not wish to be implemented or installed.
- Supply nitrogen (liquid and gas) and helium gas when required for services.
- Supply liquid helium when it is not included in the applicable plan.
- Maintain refilling equipment such as but not limited to transfer lines, gauges, and hoses in functional condition to insure safe and efficient cryogen refilling.
- Bruker service personnel must be protected from exposure to chemicals or other samples during visits to Customer's facility. As such, it is essential that Customer cleans the area around or under the instrument of spills or dirt that could contain traces of samples or other dangerous materials. Bruker requires that Customer's workspace be safe for Customer's employees and visitors, but it is Customer's responsibility to inform visitors of the hazards that may exist in the areas they visit. Bruker reserves the right to protect its employees by refusing to service equipment that is not clean, is in an area that is not clean, or presents other health and safety risks under the control of Customer. Keeping Customer's equipment clean will help Customer get the most from the equipment Customer obtained from Bruker.

6.8 Warranty

- 6.8.1 Bruker warrants to the Customer that any spare or replacement parts supplied by Bruker in relation to the covered instruments while providing the maintenance services shall be free of material defects for the period of 90 days following their supply.
- 6.8.2 The sole and exclusive remedy of the Customer in the event of Bruker's breach of its warranty given under Section 6.8.1 shall be to require Bruker's repair or replacement of the relevant defective replacement part, which Bruker shall procure without unreasonable delay following the Customer's request.
- 6.8.3 No representation or warranty is given by Bruker that all faults found in the covered instruments (or any of them) will be fixed, or will be fixed within a specified period of time pursuant to its provision of the maintenance services.
- 6.8.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the LabScape Service Agreement, whether by statute,

common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

- 6.8.5 Bruker is not obliged under the Labscape Service Agreement to provide maintenance services in respect of any malfunctioning or failed Covered Instrument where the malfunction or failure results from or has been caused in any of the circumstances referred to in Section 7 as circumstances in which maintenance services will not be provided (the “**Excluded Causes**”).
- 6.8.6 In the event that Bruker provides maintenance services in relation to a covered instrument that is faulty or otherwise in need of repair as a result of any of the Excluded Causes, Bruker may charge fees (at its then applicable rate) in respect of the provision of such maintenance services, and the Customer shall pay such fees and reimburse to Bruker its reasonably incurred expenses in providing such maintenance services, on Bruker’s request.
- 6.8.7 In the event that Bruker does not provide the maintenance services in respect of a faulty covered instrument in accordance with the Labscape Service Agreement, or provides defective parts in respect of a covered instrument, and such covered instrument continues to be faulty, the Customer’s sole and exclusive remedy will be for Bruker to on the Customer’s request and at its sole cost examine the relevant covered instrument and effect the necessary repairs and or replacement of parts to the extent necessary to complete the originally required maintenance services. Notwithstanding the previous sentence, if it is necessary for Bruker to dismantle the relevant covered instrument and reinstall it in order to effect the repair or replacement of parts referred to in this Section 6.8.7 and Bruker was not originally obliged to undertake such activities under the Labscape Service Agreement, Bruker shall be entitled to charge the Customer for the provision of such additional services, at its then applicable usual rates and the Customer shall pay such fees and reimburse to Bruker its reasonably incurred expenses in providing such additional services, on Bruker’s request.

6.9 Remote Desktop support

- For remote desktop sessions that have been held and that exceeded the ‘time per case’ limitations, Bruker reserves the right, in order to simplify the administrative process, to send an invoice for the time spent.
- A free amount of ‘time per case’ is allowed. This free amount of ‘time per case’ allows up to a maximum of twelve (12) cases per year or one (1) case per calendar month. [LabScape Comprehensive](#) has no limitation on the amount of cases that can be supported via remote desktop.

6.10 Force Majeure

Bruker shall not be liable for any failure or delay by it in its performance of the Maintenance Services or in respect of any other breach by it of the Labscape Service Agreement directly or indirectly caused by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of Bruker.

6.11 Independent Contractor

Bruker’s employees are under its exclusive direction and control. Nothing will be construed to designate Bruker or any of its employees as Customer’s employees, contractors, agents, joint venturers or partners. Nothing in the Labscape Service Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

6.12 Work Outside Scope

Any service which Bruker provides outside the agreed scope of the respective **LabScape** plan may be separately billed by Bruker to Customer at Bruker's applicable rates.

6.13 New agreements for instruments not previously covered or with a break in the coverage or maintenance cycle

In case of a new maintenance plan that does not seamlessly follow warranty expiry or expiry of a preceding equivalent plan, Bruker will fully inspect the instrument during the first planned maintenance. Bruker reserves the right to charge for rectification or repair of pre-existing faults, defects, malfunctions or any failure to meet specification that are identified at the time of initial inspection.

6.14 Service Materials

Definitions:

Proprietary Material means Bruker's proprietary manufacturing, engineering, service and/or development software, firmware, documentation, and tools developed by or under development by and/or provided to Bruker for its assembly, configuration, installation, maintenance, repair, service and/or de-installation of the magnet, as well as any upgrades or revisions of this material, which bear a label and/or incorporate or display a notice that state substantially the following:

- PROPRIETARY MATERIAL
- PROPERTY OF BRUKER BIOSPIN
- FOR BRUKER PERSONNEL ONLY
- NO RIGHTS LICENSED - DO NOT USE OR COPY
- DISCLOSURE TO THIRD PARTIES PROHIBITED

Vendor Service Material means Bruker's vendor proprietary service software, firmware, documentation, and tangible instruments or magnet combinations provided by a vendor to Bruker for Customer's installation, maintenance, repair, and/or de-installation of vendor supplied components of the magnet, as well as any upgrades or revisions of this material which bear a label and/or incorporate or display a notice that state substantially the following:

- VENDOR SERVICE MATERIAL
- PROPERTY OF BRUKER BIOSPIN
- FOR BRUKER SERVICE PERSONNEL ONLY
- NO RIGHTS LICENSED - DO NOT USE OR COPY
- DISCLOSURE TO THIRD PARTIES PROHIBITED

Bruker may deliver to the site, along with the service items supplied, Proprietary Material or Vendor Service Material which have not been purchased by or licensed to Customer. Customer hereby consents to this delivery, storage, installation and use, and to the presence of Bruker's locked cabinet or box in the site for storage of this property, and to Bruker's removal of all or any part of this property at any time, all without charge to Bruker. The presence of this property within the site will not give Customer any right or title to this property or any license or other right to use this property. Any access to or disclosure of this property by anyone other than Our Personnel is prohibited. Customer will use reasonable efforts to protect this property against damage or loss and to prevent any access to, or disclosure or use of, this property contrary to this prohibition.

6.15 Assignment

Customer shall not assign these terms and conditions or any portion thereof without the prior written consent of Bruker.

6.16 Compliance with Laws

- (a) The performance of each party hereunder is subject to compliance with all applicable laws.
- (b) Customer acknowledges that the export, re-export and transfer of Bruker's products, software, technical data or services, and any media in which any of the foregoing is contained ("Items") are subject to U.S., United Kingdom, and other export controls and economic sanctions laws and regulations ("Export Control Laws"). Customer shall comply

with the Export Control Laws, including the restrictions that apply to deemed exports and deemed re-exports.

- (c) Customer will comply with all applicable import laws or other restrictions or conditions respecting the import of Items that are now in effect or are hereafter imposed by any government or other applicable jurisdiction. Customer shall be responsible for obtaining any necessary import permit, license or authorization at its sole cost and expense. Customer shall immediately notify Bruker if an import permit, license or other authorization is required in connection with any such import.

6.17 Third-Party Rights

7 A person who is not a party to the LabScape Service Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 or any other legislation to enforce any of its terms. Limitations and Exclusions

Maintenance coverage is subject to the following limitations:

1. Maintenance applies only to defects in material and workmanship in covered products and is not to be interpreted as providing full service coverage for such items as Routine Maintenance, adjustments, or recalibration as defined by the instrument manual.
2. Not covered is electronic data recovery or the reconstruction of customer files.
3. Maintenance covers only parts and labour furnished by Bruker on products and accessories of its own manufacture. Items not manufactured by Bruker may be repaired or replaced according to the original manufacturer's warranty terms, if any, but Bruker accepts no responsibility for failure of the original manufacturer to perform under its warranty obligations.
4. The following are expressly not covered:
 - Anything beyond Bruker's reasonable control.
 - Any service to components of the magnet other than the covered instrument.
 - Any cryogen supply or cryogenic service, including without limitation cryogen recharge or replacement.
 - The provision, payment, or reimbursement of any rigging or facility cost or accessory or supply item.
 - Any service required by (1) a design, specification or instruction provided by Customer; (2) Customer's failure to fulfil its responsibilities; (3) the failure of anyone other than Our Personnel to comply with Bruker's instructions or recommendations; (4) any alteration, action or improper storage, handling, use or maintenance of any part of the magnet by anyone other than Our Personnel; and (5) any external influence to the covered instrument, including but not limited to building deficiency, power surge, fluctuation or failure, and air conditioner failure.
 - Any loss, damage, and/or instrument malfunction relating in any way to:
 - Shipping or storage;
 - Accident, abuse, alteration, misuse, or neglect;
 - Deliberate breakage or abuse of parts;
 - Operation other than in accordance with correct operating procedures;
 - Tampering with the system (e.g. modification or tampering with one part of the instrument can, in some cases, affect another part of the instrument);
 - Lack of routine care and maintenance, such as lubrication and cleaning, as indicated in the operating manual;
 - Inadequate utility service, failure of electrical or other energy supplies, incorrect physical environment or other inadequate facilities or utilities as indicated in the operating manuals and/or pre-installation instructions;
 - Chemical action or contamination;
 - Failure to maintain proper liquid helium level in superconducting magnets; or

- Products, items, parts, accessories, subassemblies, or components which are expendable in normal use or operation of the instrument, or those of limited life, such as but not limited to filters, glassware, glass accessories, fuses, probe inserts, variable temperature dewars, and transfer lines, unless specifically covered by an express agreement extended to Customer by Bruker in writing.