

1. **Agreement:** This terms and conditions shall govern all Orders placed for Services by Customer subject to Boeckeler Instruments' Quote for Services and during the Contract Period set forth thereon and shall supersede and replace all prior agreements between the parties ("Agreement"). Boeckeler Instruments reserves the right to change or modify these terms at any time. All Services contemplated hereunder are for post-warranty maintenance and support of Boeckeler Instruments and its RMC Product line instruments only.
2. **Definitions:** As used herein and as applicable to all Orders placed under this Agreement:
 - "Contract Period" shall mean the time period of coverage for the applicable Services as set forth for each Instrument (s) on the Quote.
 - "Critical Hardware Upgrade" means an OEM factory recommended upgrade where lack of the upgrade will impair Instrument performance. Customer" shall mean the customer receiving the Services as identified on the attached Quote.
 - "Boeckeler Instruments" shall mean Boeckeler Instruments, Inc. for the purposes of Services provided in the United States of America
 - "Non-Critical Hardware Upgrade" means any upgrade that is not crucial for functionality of an Instrument.
 - "Critical Software Update" means an OEM factory recommended update where lack of the update will impair instrument performance.
 - "Non-Critical Update" means any update that is not crucial for functionality of an Instrument.
 - "On-Call Services" means remedial services, provided upon request by Customer, to inspect, evaluate and repair Instrument malfunctions.
 - "Order" shall mean any transactional document or purchase order under which Customer may purchase a Service or Repair Package for a Boeckeler Instruments Instrument and which incorporates these Terms and Conditions.
 - "Preventative Maintenance (PM) Services" shall mean the set number of scheduled standard maintenance inspections to be provided on an Instrument, as referenced on the applicable Quote for Services.
 - "Products" shall collectively refer to and include the following:
 - "Consumables" which include disposable materials and other products which may be used in conjunction with Boeckeler Instruments;
 - "Instruments" means the equipment, system, or other instruments provided and/or manufactured by Boeckeler Instruments and all operating systems or other software which may be embedded therein;
 - "Reagents" means liquid materials in its application state which may be used in conjunction with Boeckeler Instruments; and
 - "Software" means any and all Boeckeler Instruments proprietary computer programs, operating software, firmware or other software applications which are either embedded into an Instrument or provided as an application licensed to Customer hereunder.
 - "Quote" shall mean the proposal for Services issued by Boeckeler Instruments to Customer, which sets forth pricing, Service Package selections and applicable Contract Periods for each Instrument which incorporates these Services Terms and Conditions.
 - "Services" shall mean collectively any installation, mechanical support, On-Call or Preventative Maintenance (PM) Services provided to Customer under this Agreement.
 - "Service Contract" shall mean the complete service offering set forth on the Quote, which shall be either Preventative, Standard, Premium or other applicable repair level offering.
 - "Software Update" means a patch or minor improvement to a version of Software already installed on an Instrument.
 - "Software Upgrade" means a replacement of an older version of Software.
 - "User Maintenance" shall mean and include all standard and routine operator maintenance required to be performed by Customer as set forth in the applicable Boeckeler Instruments Instruction Manual provided with or made available for each Instrument.
3. **Maintenance Support:** Boeckeler Instruments agrees to provide the Services for Boeckeler Instruments and RMC product line, including scheduled Maintenance Services inspections and On-Call Service requests, during normal workdays, Monday through Friday, excluding Boeckeler Instruments observed holidays, and during normal working hours of 8:00am to 5:00pm local time. Subject to the availability of personnel, after-hours service is available upon request at an additional charge. Customer acknowledges that the Instruments may not be available for use during scheduled maintenance and service visits and that Boeckeler Instruments shall not be liable for such Instrument downtime. Preventative Maintenance Services must be requested and scheduled directly by Customer. The place of performance for Services shall be either the Customer's facility or the Boeckeler Instruments factory in Tucson, AZ or such other place as determined by Boeckeler Instruments in its sole discretion. While every effort will be made to render Services promptly, Boeckeler Instruments does not make any guaranty regarding specific response times to Service requests, or Instrument up time minimums. Services are not offered or provided on Consumables, Reagents or other third-party products.
4. **Additional Services:** As mutually agreed upon between the parties, or subject to Customer's written request, additional Services which are not otherwise included in a specific Service Package, may be provided by Boeckeler Instruments upon Customer request, and shall be subject to Boeckeler Instruments' then current and generally available time and materials rates and pricing for: labor, travel and waiting time, travel expenses, parts and materials, shipping and packaging, installation for additional Instruments, modifications and improvements, requested de-installation and re-installation of an Instrument, optional Instrument specific services, and other items as applicable. Additional Services may also be subject to additional terms and conditions which may be separately agreed upon in writing.
5. **Upgrades:** Critical hardware upgrades and critical software updates will be provided at the earliest availability. Non-critical software updates will be provided at the next scheduled maintenance or repair visit but may not be scheduled independently. Non-critical hardware upgrades and software upgrades will be provided as an Additional Service.
6. **Pre-existing Conditions:** Any Instruments which have not been maintained under a Boeckeler Instruments warranty or previous Agreement by Boeckeler Instruments immediately prior to the date of this Agreement, must be subject to inspection, certification and acceptance by Boeckeler Instruments, and if necessary, repaired or reconditioned such that the Instrument meets Boeckeler Instruments' standards for continued maintenance and support.
7. **Customer Responsibilities:** At all times while the Instruments are covered by an applicable Service Package that the Customer must adhere to the following:
 - a. Ensure that the Instrument is always operated by trained personnel in accordance with its applicable Boeckeler Instruments Instruction Manual.
 - b. Perform all required User Maintenance and schedule periodic
 - c. Preventative Maintenance Service visits with Boeckeler Instruments.
 - d. Notify Boeckeler Instruments immediately through Boeckeler Instruments' designated telephone support contact numbers of any malfunction or inoperability of an Instrument and promptly provide a full description of the fault or problem.
 - e. Customer must provide Boeckeler Instruments with ninety (90) days written notice of intent to move any Instrument.
8. **Service Visit Requirements:** Prior to any service visit by Boeckeler Instruments personnel, Customer must:
 - a. Ensure that Boeckeler Instruments has complete, accompanied access to the Instrument at the times mutually agreed and scheduled for the service. Any delay or waiting time may be subject to additional fees.
 - b. Provide required working conditions and facilities (including heat, light, ventilation, and electrical supplies, telephone and communication access) for use by Boeckeler Instruments personnel.
 - c. Customer shall ensure that any third-party auxiliary equipment which is affixed to or positioned near the Instrument is removed or adequately protected. Customer shall also implement other safeguards to protect all programming, programs, data and other removable storage media before an Instrument is to be repaired. In the event of the failure of Customer to remove or protect such auxiliary equipment, Boeckeler Instruments shall not be responsible for any accidental damage thereto.
 - d. At the time of service visit, notify Boeckeler Instruments' personnel of any hazardous or dangerous environments within the vicinity of the Instruments and instruct and assist Boeckeler Instruments' personnel to prevent exposure to same.
9. **Pricing:**
 - a. **Fees.** All Service Fees, as set forth on the Quote, shall remain firm for the duration of the Contract Period. Additional fees may be invoiced for Additional Services as required. All pricing for any applicable extension of the Contract Term may be subject to change.
 - b. **Payment.** Unless otherwise set forth on the applicable Quote, Payment terms are net thirty (30) days from date of invoice. Past due balances are subject to a service charge of one and one-half percent (1 1/2%) per month or the highest rate allowed by law, whichever is lower. Customer shall notify Boeckeler Instruments of any inconsistent and / or disputed amounts within thirty (30) days from date of invoice. Customer waives its right to dispute charges after this time frame.
 - c. **Taxes.** All Service Fees are exclusive of any applicable, sales tax, goods and services taxes, value added tax, or any similar taxes or other charges. Customer is responsible for all taxes, duties, fees and expenses imposed by federal, state or local governmental entities, applicable to the Services furnished hereunder or in lieu thereof. Where Customer is exempt from such taxes, Customer shall provide Boeckeler Instruments with a tax exemption certificate acceptable to and considered valid by the applicable taxing authorities prior to issuing any applicable purchase order related to this Agreement.
10. **Termination:**
 - a. **For Convenience.** Either party may terminate this Agreement upon sixty (60) days' written notice. If, prior to the expiration of the first twelve (12) month period of the Term, Customer terminates this Agreement other than for a Material Breach, Customer shall not be entitled to a refund for Services Fees paid, unless otherwise agreed to in Boeckeler Instruments' sole discretion.
 - b. **For Material Breach.** Termination of this Agreement by either party will be permitted in the event of a Material Breach (as defined below) that if possible to cure, remains uncured ninety (90) days after written notice specifying the breach is given, by the non-breaching party, to the breaching party. A "Material Breach" is defined as (a) the failure of a party to fully comply with its obligations under this Agreement; (b) the making of assignment for the benefit of creditors by a party; (c) the institution of bankruptcy, reorganization, liquidation or receivership proceedings by or against a party; and (d) insolvency of a party.
 - c. **Biohazard Contamination.** In the event an Instrument comes in contact with an agent classified Biohazard Level II or above by the US Department of Health and Human Services, Centers for Disease Control and Prevention, Customer shall immediately notify Boeckeler Instruments to identify a remedial course of action if no pre-established protocols to service the Instrument apply, but Boeckeler Instruments shall have no obligation to provide Services on such Instrument.
 - d. **Beyond Repair.** In the event that Boeckeler Instruments determined that the cost to repair an instrument exceeds its fair market value, Boeckeler Instruments has the right to terminate the Agreement and Boeckeler Instruments will refund to Customer the remaining pro-rated amount of the fees already paid during the applicable Contract Period.
11. **Service Standards:** Boeckeler Instruments represents and warrants that the Services provided under this Agreement will be performed in a workmanlike and professional manner with reasonable skill, care and diligence, all in accordance with prudent industry practices and standards and otherwise in accordance with this Agreement and in compliance with all applicable laws. All Services shall be provided by an authorized Boeckeler Instruments representative subject to the fees set forth under the applicable Quote and Service Plan for the affected Instrument(s). Services, including repair parts, shall be warranted for the period of ninety (90) days. Customer's sole remedy for breach of said warranty shall be a re-performance of the Services. Boeckeler Instruments does not warrant that the Services will render an Instrument to be error free, or that continued use and operation of the Instrument will be uninterrupted. Boeckeler Instruments telephone support shall be provided "as is" without warranty of any kind. The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, express, implied, or statutory. **NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

12. **Exclusions:** Service support shall not apply to any defect or performance deficiency on a Product (including failure to conform to Product descriptions or specifications) which results, in whole or in part, from (1) negligent storage or handling of the Product by Customer, its employees, agents, or contractors, (2) failure of Customer to prepare or maintain the site, provide power requirements or operating environmental conditions in compliance with any applicable instructions or recommendations of Boeckeler Instruments, (3) adverse power conditions or environmental conditions such as erratic power, voltage spikes, RF or magnetic interference, HVAC failure or other causes beyond the reasonable control of the Boeckeler Instruments, (4) absence of any Product, component, or accessory recommended by Boeckeler Instruments but omitted or removed at Customer's direction (5) any misuse, alteration or damage to the Product by persons other than Boeckeler Instruments, (6) combining Boeckeler Instruments' Product with any product furnished by others, or with incompatible Products, where such combination causes failure of or degradation to performance of Boeckeler Instruments' Product (including the substitution of any reagent not authorized by Boeckeler Instruments) (7) improper or extraordinary use of the Product, improper maintenance of the Product, failure to maintain the Product or comply with any applicable instructions or user manuals provided by Boeckeler Instruments; or (8) if any service, repair or relocation of an Instrument was performed or attempted by personnel not authorized by Boeckeler Instruments.
13. **Replacement Parts:** Replacement parts will be provided only as required or on an exchange or new part basis. Boeckeler Instruments reserves the right to use refurbished material or parts for all repairs for Instruments covered by a Service Plan. Warranty of refurbished items is not limited compared to new items. Labor to install any replacement parts is included as part of the Services. All parts which become subject to removal and replacement shall become the property of Boeckeler Instruments. Consumables, and Reagent items are not eligible for replacement under this Agreement.
14. **Indemnification:** Customer will indemnify, defend and hold Boeckeler Instruments harmless from all claims, costs (including reasonable attorneys' fees), damages and liabilities ("Claims") arising from (i) Customer's use or misuse of the Products; (ii) any act or omission which results bodily injury or death of any person or any loss or damage to property; (iii) Customers' fault, negligence, willful misconduct, omissions or breach of Customer's obligations under this Agreement. Boeckeler Instruments will indemnify, defend and hold Customer harmless from all Claims, arising from (i) any act or omission which results bodily injury or death of any person or any loss or damage to property arising directly from Boeckeler Instruments' performance of the Services under this Agreement, except to the extent the same are caused by the negligent acts or omissions of Customer; (ii) any negligent acts, willful misconduct or omissions of Boeckeler Instruments; or (iii) any breach of the obligations under this Agreement.
15. **Limitation of Liability:** Boeckeler Instruments' entire liability and Customer's exclusive remedy for damages, for any cause whatsoever, regardless of the form of action, whether in contract or in tort, during any twelve (12) month period shall be limited to the amount of \$15,000. To the fullest extent permitted by law, in no event shall either party be liable for any lost revenues, lost profits, special, indirect, incidental or consequential damages, economic loss, downtime or unavailability of an Instrument as a result of a malfunction, maintenance or repair, or property damage incurred by the other party. The aforementioned limitation shall not apply to indemnification obligations hereunder or damages resulting from the gross negligence, bad faith or willful misconduct of a party or its personnel.
16. **Remedies:** Without limiting its remedies under existing law, Boeckeler Instruments may, in the event of a Material Breach by Customer, and in its sole discretion, pursue any or all of the following remedies: (a) suspend or cancel its performance hereunder, including any pending Services; (b) declare all unpaid balances, payments and expenses due or to become due hereunder immediately due and owing (c) terminate this Agreement without additional liability or obligation to Customer; (d) seek any other cumulative remedies at law or in equity, or (f) exercise any all rights and remedies available to a secured creditor under the Uniform Commercial Code. The foregoing remedies are cumulative, and may be exercised by Boeckeler Instruments, in whole or in part, at Boeckeler Instruments' sole discretion. The substantially prevailing party shall be entitled to its attorneys' fees, costs, and expenses (including expert expenses) in connection with any claims, causes of action or litigation.
17. **Compliance:** Customer shall comply with the terms of the Occupational Safety and Health Act, the federal Hazardous Material Regulations and any other statutory regulations, including applicable privacy regulations governing the use of the Instrument(s). Neither party to this Agreement nor shall engage in any activity prohibited by antickickback, anti-self-referral, or any other federal, state or local law or regulation which relate to health care and/or the performance of services under this Agreement, as those regulations now exist or as subsequently amended, renumbered or revised.
18. **Governing Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, excluding choice of law provisions.
19. **Force Majeure:** Except as expressly stated in this Agreement, neither party shall be liable for any failure to perform hereunder (other than the payment of sums due and owing) due to labor strikes, lockouts, fires, floods, water damage, riots, government acts or orders, interruption of transportation, inability to obtain material upon reasonable prices or terms, or any other causes beyond its control.
20. **Severability Waiver:** In the event that any one or more provisions contained herein (other than the provisions obligating Customer to pay Boeckeler Instruments for the Services) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. A party's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.
21. **Notices:** Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three (3) days after being sent via registered mail with return receipt requested, by courier, by first-class mail, postage prepaid. Copies may be sent via email (with evidence of receipt required) at the addresses specified on the applicable Quote for the respective parties or at such other address as either party may from time to time designate to the other in writing.
22. **Assignment:** This Agreement may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding any provision of this Agreement to the contrary, either party shall have the right to assign or otherwise transfer its interest under this Agreement, without consent of the other party, to any of its affiliated entities or to any entity to which a party may sell, transfer, convey, assign or lease substantially all of the assets or properties used in connection with its performance under the Agreement. Any other assignment of the Agreement without the express written consent of the other party will be invalid.
23. **Independent Contractor:** Boeckeler Instruments is performing the Services as an independent contractor and not as an employee of Customer and none of Boeckeler Instruments' personnel shall be entitled to receive any compensation, benefits or other incidents of employment from Customer. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or agency relationship between Customer and Boeckeler Instruments. Neither Boeckeler Instruments nor Customer shall be or become liable or bound by any representation, act or omission whatsoever of the other.
24. **Confidentiality:** This Agreement, an Order and any material transmitted herewith may contain information confidential or proprietary to either party, its subsidiaries or affiliates ("Confidential Information") and such information is not to be used by the receiving party other than the purpose for which it was transmitted by the disclosing party. Each party shall (1) hold such information in strictest confidence and not disclose such information to third parties without prior, written consent of the disclosing party; and (ii) not collect, access, retain use or share the Confidential Information other than for performance of the Services under this Agreement.

05/2020