



BD ACQUISITION AGREEMENT

BD Agreement Number: PACFD36653_2054/02/03_SB

Date: February 3, 2025

This BD Acquisition Agreement ("Agreement") is by and between County of Contra Costa on behalf of Contra Costa Regional Medical Center ("Customer") and BECTON, DICKINSON AND COMPANY, through its BD Life Sciences – Integrated Diagnostic Solutions business unit ("BD"), each as identified in the applicable signature block below. BD agrees to provide and Customer agrees to pay for, the Equipment, Consumables, Accessories, and/or Software ("Products") and/or services ("Services") set forth in this Agreement, all in accordance with the terms and conditions set forth herein. This Agreement is comprised of:

- 1) Customer Pricing and Commitments (Exhibit A);
- 2) Standard Terms and Conditions (Exhibit B);
- 3) Warranty and Service Terms and Conditions (Exhibit C); and
- 4) Service Plans (Exhibit D);

In the event of conflict among the foregoing items, the order of precedence is as numbered above. This Agreement constitutes the complete agreement of the parties relating to BD's delivery of the goods and/or services identified in Exhibit A and supersedes all prior oral or written proposals, statements, agreements, commitments, or understandings with respect to the matters provided for herein.

- **Term of Agreement ("Term"):** 36 months (commencing on the Effective Date of this Agreement); Customer has option to renew for two (2) consecutive twelve (12) month renewals
- **Price Protection:** 12 months
- **Payment Terms:** Net 30 days
- **Shipping option Equipment:** Direct
- **Shipping option Consumables:** Direct
- **Service Plan Term:** 36 months (commencing on the Effective Date of this Agreement)
- **BD offer Expiration Date (if not signed by both parties below):** 60 days from Date of Agreement

Each party has caused this Agreement to be signed by an authorized representative on the date set forth below, the latter of which will be the "Effective Date" of this Agreement.

CUSTOMER:	County of Contra Costa on behalf of Contra Costa Regional Medical Center Address: 2500 Alhambra Ave. Martinez, CA 94553	BD:	Becton, Dickinson and Company, through its BD Life Sciences – Integrated Diagnostic Solutions business unit 7 Loveton Circle Sparks, MD 21152 www.bd.com
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Agreed to By: _____	Agreed to By: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____
Date: _____	Date: _____



BD Exhibit A: Customer Pricing and Commitments

- Equipment.** The Equipment covered by this Agreement is set forth below. Customer agrees to purchase or rent the Equipment, as the case may be, at the price set forth below. All payments are to be made in accordance with and subject to Exhibit B, Section 3 (Payment Terms). The Equipment shall be located at the address listed below.

Equipment Description	Equipment Location	SKU	Unit Qty.	Acquisition Method ¹	Serial No.
BD Totalys SlidePrep	2500 Alhambra Ave., Martinez, CA 94553	491346	1	Reagent Rental - Onsite	TSP0422
BD PrepMate	2500 Alhambra Ave., Martinez, CA 94553	491103	1	Reagent Rental - Onsite	NA

- Equipment Software and Accessories.** Intentionally Deleted.
- Equipment Installation.** Intentionally Deleted.
- Consumable Purchase Requirements.** During the Term, Customer agrees to purchase the consumables, reagents, panels, supplies and/or assays (hereinafter, the "Consumables") as set forth below.

Consumable Description	SKU/CAT#	Annual Unit Commitment	Total Commitment	Case/Kit Pricing
GYN SUREPATH™ 480 SlidePrep Kit	491456	7,680 Tests / 16 Kits	23,040 Tests / 48 Kits	\$2,316.60
GYN SUREPATH™ 480 PrepMate Kit	491455	7,680 Tests / 16Kits	23,040 Tests / 48 Kits	\$422.40
Kit Cytology Stain	491458	16 Kits	48 Kits	\$40.00
<i>A Combination of the following Vial and Collection Device Kits:</i>		16 Kits	48 Kits	
GYN prefilled Preservative Vial Kit 500 ea	491452			\$375.00
Rovers Cervex Brush 500 ea Collection Device	491461			\$350.00
Cooper Brush / Spatula 500 ea Collection Device	490525			\$350.00
Rovers Combi-Brush 500 ea Collection Device	491462			\$350.00
NON-GYN SUREPATH™ 192 SlidePrep Kit	491304	As Needed	As Needed	\$1,231.60
BD CytoRich Red Preservative 3.6L	491336	As Needed	As Needed	\$130.00
BD NON-GYN Stain Kit	491459	As Needed	As Needed	\$40.00

The complete GYN Lab Kit consists of the SlidePrep Kit, PrepMate, Vial, and a Collection Device.
 The complete GYN Lab Kit price is \$7.30 Price Per Test.
 The complete NON GYN Lab Kit consists of the NG SlidePrep Kit, CytoRich Red, NG Stain Kit.
 The complete NON GYN Lab Kit price is \$7.30 Price per Test.

Quarterly Unit Commitments will be enforced as provided in Exhibit A. Section 4 (Consumable Purchase Shortfall) after the date the Equipment is installed ("Installation Date"). Notwithstanding the foregoing, Customer shall meet their Annual Unit Commitment. In case of non-renewal and upon Term expiration of this Agreement, if the Total Unit Commitment described in Exhibit A.4 is not met by the Customer, BD may invoice the Customer the remainder of the outstanding unpurchased Consumables for the Term.

- Training.** The following training will be provided for newly purchased Equipment: None (Refer to Equipment User's Manual and the Labeling)
- Service.** Customer shall maintain a service plan ("Service Plan") for all Equipment listed in Section 1 (Equipment) during the Term.

Service Plan Financed through the purchase of Consumables						
Equipment Description	Service Plan Term	Service Plan	Unit Qty.	Annual Cost Per Unit	Total Annual Cost	Total Term Cost
BD SlidePrep	36	Essential	1	The cost of the Service Plan is included with the price of the Consumables through the expiration of this Agreement.		
BD PrepMate	36	Essential	1	The cost of the Service Plan is included with the price of the Consumables through the expiration of this Agreement.		

If, at any time, Customer does not maintain a Service Plan, Customer will be required to pay for Service at BD's then-current rate for parts, labor, travel and material.

¹ For Equipment purchased under a Reagent Rental or Lease, BD shall retain title to the Equipment.
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1. **Pricing.** Prices for Consumables will remain firm for the period identified in this Agreement beginning on the Effective Date. After such period, prices are subject to an increase of 3% per annum to be applied to the then current price effective upon the next and each subsequent anniversary of the Effective Date. For Consumables shipped directly by BD, BD will arrange for shipment, freight prepaid and added to the invoice. Notwithstanding anything to the contrary contained in this Agreement, in the event Products are purchased through authorized distributors, the applicable terms of the Customer's agreement with the authorized distributor govern the relationship between those parties, including as to all pricing, taxes, ordering, delivery and return terms. Prices included in this Agreement shall be provided by BD to its authorized distributors, such prices represent the maximum price distributors may charge the Customer for such Products. Prices for Service Plans will remain firm for the duration of the Service Plan Term. After the expiration of the Service Plan Term, prices are subject to an increase of 3% per annum to be applied to the then current price effective upon the next and each subsequent anniversary of such increase.
2. **Consumable Purchase Shortfall.** Consumable purchases may be reviewed and/or reconciled by BD during the Term, at BD's sole discretion. Consumable Purchases may be monitored by BD on a quarterly (3-month) basis to determine if Customer is compliant with Annual Unit Commitment compliance stated under Exhibit A.4. If BD determines that Customer has not met the twelve-month Annual Unit Commitment, BD may revoke price protection and increase prices to 3%. If Customer is compliant, prices will be determined based on price protection specified in this Agreement. If Customer's actual Consumable purchases fail to average the Annual Unit Commitment for any three (3) months period during the Term after the Ramp Up Period (each, a "Compliance Period"), BD may do any combination of the following: (1) invoice Customer for the difference between the agreed minimum Consumable Purchase Requirements and the quantity of Consumables actually purchased, at the contract price then in effect; or (2) revise the then current Consumables pricing to reflect such lower volumes and extend the Term to allow Customer to make up for such shortfall. BD shall provide Customer written notice of any adjustment under this Section. If Consumable purchases exceed the Consumables Purchase Requirements during any Compliance Period, excess purchases will be applied towards the next consecutive Compliance Period during the Term.
3. **Payment Terms.** The terms in effect under this Agreement are net thirty days from date of invoice. Invoices forty-five days or more past due may be subject to a late charge of 1.5% per month or the maximum permitted by law, whichever is less, from the due date until the date such payment is received by BD. Notwithstanding anything to the contrary contained in this Agreement, in the event Products are purchased through authorized distributors, the applicable terms of the Customer's agreement with the authorized distributor govern the relationship between those parties as to invoicing and payment terms.
4. **Taxes.** Customer shall pay all taxes and assessments including interest and penalties which might be levied against the Products during the Term. BD will not collect sales tax if Customer provides BD with written evidence of Customer's exemption.
5. **Title.** Title to Consumables passes upon delivery to Customer. Title to the Equipment will remain with BD, at all times, until receipt of payment of the purchase price, if any, and shall remain with BD indefinitely in cases where the Equipment Acquisition Method is a Lease or Rental.
6. **Service.** The BD Equipment listed on Exhibit A Section 1 (Equipment) is regulated by the Food and Drug Administration. As such, only BD's designated service technicians ("Service Representative") may service, maintain (other than maintenance described in the Equipment User's Manual expressly to be done by the end user) or repair the Equipment. If no Service Plan has been purchased by Customer as indicated in the Exhibit A Section 5 (Service), Customer shall be responsible for charges for service activities and shall be billed at BD's then prevailing rate for parts, labor, material and travel. Regardless of the Service Plan selected, Customer shall be responsible for promptly informing BD in the event maintenance or service is required or advisable with respect to the Equipment. BD reserves the right to use new or refurbished parts related to the Equipment. Service shall be provided by appointment Monday through Friday from 8:00 am to 5:00 pm (excluding BD holidays) at Customer's facility.
7. **Maintenance and Risk of Loss.** Customer agrees to maintain the Equipment in accordance with Equipment User's Manual, Labeling, and Documentation. In the case of a Lease or Rental, Customer agrees to maintain the Equipment in accordance with the Documentation and Customer shall bear all risk of loss and damage with respect to the Equipment for any cause from delivery of the Equipment until such Equipment is returned to BD. If any of the Equipment is damaged or destroyed while in Customer's possession, Customer shall promptly notify BD and the repair or replacement of such Equipment shall be at Customer's expense.
8. **Approved Use.** The Products are intended for use in accordance with the User's Manual, Package Insert, and other Labeling (including the limitations and restrictions contained therein). Customer shall use the Products in a manner consistent with all applicable laws, rules and regulations, and shall be responsible for determining that the Products are appropriate for its use.
9. **Limited Warranty.**
 - a. **Consumables.** BD warrants that, during the Term and provided Customer remains in compliance with the terms and conditions of this Agreement and uses, stores and maintains the Consumables in accordance with the labeling, including package and product inserts (the "Labeling"), all Consumables furnished under this Agreement will meet the specifications stated in the Labeling in all material respects, and that all Consumables furnished under this Agreement shall be free from defects in material and workmanship until the expiration date stated in the Labeling for such Consumables or for six months for Consumables without a stated expiration date (the "Consumables Warranty Period"). For any breach of the limited Consumables Warranty set forth herein, BD's sole liability, and Customer's sole and exclusive remedy, will be for BD, at its option, to replace the non-conforming Consumables with Consumables that conform to such limited warranty, or to refund to Customer the amount paid to BD for such non-conforming Consumables. Customer must provide written notice of any such non-conformance to BD within ten days of the occurrence of the non-conformity. To the extent the Consumables are used for patient tests, including screening tests, the limited warranty set forth herein does not apply to the actions of Customer and/or its health care providers in determining the course of patient care.
 - b. **Equipment.** BD warrants to the Customer that during the twelve month period after the Installation Date (the "Equipment Warranty Period") and provided Customer (i) remains in compliance with the terms and conditions of this Agreement; (ii) uses, stores and maintains the Equipment in accordance with the Equipment User's Manual and the Labeling; and (iii) uses the Equipment with authorized or compatible Consumables in accordance with the Equipment User's Manual and the Labeling; all Equipment hereunder will meet the specifications stated in the Equipment User's Manual and the Labeling in all material respects, and that all Equipment purchased under this Agreement shall be free from defects in material and workmanship for the Equipment Warranty Period. For any breach of the limited Equipment Warranty set forth herein, BD's sole liability, and Customer's sole and exclusive remedy, will be for BD, to repair or replace the non-conforming Equipment with Equipment that conforms to such limited warranty. Customer must provide written notice of any such non-conformance to BD within the Equipment Warranty Period.
 - c. **Service.** All parts supplied by BD during the Equipment Warranty Period or any Service Term period are warranted against defects in material and workmanship until the expiration of Equipment Warranty Period, Service Term or ninety days, whichever is longer. All service shall be performed in a professional workmanlike manner. BD's sole liability, and Customer's sole and exclusive remedy, under this limited warranty shall be to repair or replace parts found to be defective, and to correct any Service not performed in accordance with the Equipment Warranty or Service Term. The warranties do not apply to Equipment and/or parts that have been misused or not maintained in accordance with User's Manual or Labelling.
 - d. **Software.** Except as set expressly forth in this Agreement, the software is provided "as is". BD does not warrant that the software is error-free or will operate without interruption. BD does not warrant that the software will work in all combinations selected by the Customer or that the software will meet the requirements of the Customer. BD's express warranties will not be enlarged, diminished or be affected by, and no obligation or liability will arise out of BD's rendering technical or other advice or service in connection with the software. Without limiting the foregoing, BD disclaims all warranties whatsoever (including but not limited to any express warranties) with respect to any third party or Customer software, whether or not specifically recommended by BD or interoperating with the software, including customer-sourced hardware.
 - e. THE LIMITED CONSUMABLES, EQUIPMENT, SOFTWARE AND SERVICE WARRANTIES PROVIDED UNDER THIS AGREEMENT ARE THE ONLY WARRANTIES PROVIDED BY BD HEREUNDER, AND SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
10. **Software. (a) Software Applications.** The software applications provided by BD hereunder are tools to be used by Customer, its staff, employees and agents in the performance of their professional responsibilities and should not substitute for, and are not intended to replace, their professional skill and judgment and clinical decision

making. Customer agrees that it is solely responsible for the care of its patients, and agrees that the use of the software for any purpose related to such care or otherwise cannot in any way be controlled by BD. Customer assumes all risks and liability for use of the information produced as a result of the operation of the software, whether such information is used alone or in combination with other information; **(b) Privacy and Confidentiality.** Customer shall also be responsible for maintaining the privacy and confidentiality of data and for compliance with applicable laws governing privacy of patient information and other personal data, and for conducting and maintaining timely backup procedures to protect the data from loss or corruption. BD is not responsible for any archival, backup or disaster recovery services; **(c) Software License.** BD hereby grants a nonexclusive, nontransferable, limited license to use the software provided to the Customer solely in connection with Equipment purchased/leased under this Agreement and only in conjunction with Customer's internal business use of the Equipment purchased/leased under such Agreement. Customer receives no title or ownership rights to the software and may not distribute it or make it available over a network where it could be used by other systems or machines. Except as expressly provided herein Customer may not (i) modify, adapt, decompile, disassemble, or reverse engineer the software; (ii) create any derivative works based on the software; (iii) make any copies of the software, except for one copy solely for backup or archival purposes; (iv) allow any third party to use or have access to the software; or (v) sell, transfer, assign or sublicense the software. **(d) Third Party Software.** The software may include software and data licensed from third parties, and such software and data are subject to the applicable third-party licenses. Customer shall comply and cause its Users to comply, with such third-party license. It is the responsibility of Customer to register all third-party products and software with the third party for purposes of warranty and end user license agreement ("EULA"). If the product contains CylancePROTECT® anti-malware end point security, Customer hereby acknowledges and agrees that it has read, reviewed, understands, and its use of CylancePROTECT is subject to, the EULA located at <https://www.cylance.com/en-us/bd-eula.html>.

11. Software License and Support Terms and Conditions. If applicable, Customer shall execute a Software License and Support Agreement, which shall be attached hereto as Exhibit E.

12. Indemnity.

a. **General Indemnification.** Each Party shall defend against and indemnify the other Party for any loss, damages, or liability, including reasonable attorneys' fees, resulting from any third party claim ("Claim") to the extent arising from the indemnifying Party's (a) negligence or willful misconduct, and (b) breach of its representations, warranties and covenants under this Agreement. In addition, BD shall defend against and indemnify Customer for any Claim to the extent arising from the breach by BD of its express warranty provided under this Agreement, and Customer shall defend against and indemnify BD for any Claim to the extent arising from, (x) the negligence or willful misconduct of any healthcare professional in performing services in a healthcare facility owned or operated by Customer. The indemnified Party shall give prompt notice of the Claim to the indemnifying Party; however, any delay in giving notice will not excuse the indemnifying Party's obligations under this section, except to the extent the indemnifying Party has been prejudiced by the delay. The indemnified Party shall cooperate with the indemnifying Party in the defense of the Claim and in any settlement of the Claim; however, the indemnified Party may employ separate counsel, at its expense, to provide or participate in the defense, and the indemnifying Party may not settle a Claim unless the settlement completely and forever releases the indemnified Party from all liability with respect to the Claim.

b. **Infringement Indemnification.**

1. **BD Obligations.** Notwithstanding the general indemnification section, and subject to the exceptions noted below, BD shall defend Customer against any Claim that BD's manufacture or sale of Products infringes any patent or copyright of such person enforceable in the U.S. or misappropriates any trade secret of such person ("Infringement Claim"). On the occurrence of any Infringement Claim, or in the event BD believes an Infringement Claim is likely, BD may, at its option (i) modify the Products to make it non-infringing, or substitute functionally equivalent Products; or (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) refund the purchase price of the Products in question.
2. **Exceptions.** BD will have no obligation or liability to the extent the Infringement Claim arises from: (i) the combination or use of the Products with products, services, hardware, software, technology, data or other materials not furnished or approved by BD; (ii) modification of the Products, except as expressly authorized by BD in writing; or (iii) use of the Products other than in accordance with the Documentation, in violation of the Agreement or any applicable law or regulation, or after notice from BD that Customer should cease use of the Products.
3. **Sole Remedy.** The obligations set forth in this section will constitute BD's entire liability and Customer's sole remedy for any actual or alleged Infringement Claim.

13. Limitation of Liability.

- a. **Excluded Liabilities.** NO PARTY WILL BE LIABLE TO THE OTHER PARTY FOR: (I) ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) ANY DAMAGES FOR BUSINESS INTERRUPTION; OR (III) RE-PROCUREMENT COSTS, LOSS OF PROFITS, INCOME, BUSINESS, USE, DATA OR GOODWILL.
- b. **Liability Limitation.** Excluding claims for the total fees due under a Customer Order, the total liability of a Party in connection with any matter arising from or relating to a Customer Order (whether in contract, tort, negligence or otherwise) will be limited to the amount of all fees paid or to be paid by Customer under the Customer Order(s) to which the matter relates during the twelve-month period immediately preceding the event giving rise to such liability.
- c. **Exceptions.** The exclusions set forth in Section Exhibit B. Section 13(a)13.a (Excluded Liabilities) and the limitation set forth in Exhibit B. Section 13(b)13.a (Liability Limitation) will apply to the fullest extent permitted by law, but will not apply to any liability arising from: (i) indemnification obligations hereunder related to death or bodily injury; or (ii) a Party's fraud gross negligence or willful misconduct.

14. Data Security; Privacy. Customer hereby acknowledges and represents that (i) it has read, reviewed and understands any and all Documentation located at <https://www.bd.com/en-us/support/product-security-and-privacy> related to the Equipment and will periodically review such Documentation for any changes, improvements, and/or updates as applicable to the relevant Equipment (s); (ii) any information contained in the Product Security White Papers is for reference purposes only; and (iii) BD does not make any promises or guarantees to Customer that any of the methods or suggestions described in the Product Security White Papers will protect data, programs and systems associated with the Equipment; restore Customer's systems; resolve any issues related to any malicious code or achieve any other stated or intended results. Customer hereby agrees to accept and exclusively assume any and all risk of utilizing or not utilizing any guidance described in this Product Security White Paper. Furthermore, Customer represents, warrants, and covenants that (1) Customer's use of the Equipment does not and will not invade or violate privacy, personal or proprietary rights, or other common law or statutory right of any third party, (2) Customer has implemented reasonable and appropriate safeguards to protect data, programs and systems associated with the Products in accordance with legal requirements and industry standards, including appropriate physical safeguards, and (3) Customer shall not upload any content that contains software viruses or is designed to interrupt, destroy, or limit the functionality of any Products, or that contains other harmful, disruptive, or destructive files or content. BD incorporates a patch management program where security patch validations are performed quarterly and released annually for select BD manufactured Equipment. Deployment of software patches are product dependent and may be deployed remotely or onsite by a field service engineer. Customer shall maintain the privacy and confidentiality of Customer Data and comply with applicable laws governing privacy of Customer Data (including PHI), and for conducting and maintaining timely backup procedures to protect Customer Data from loss or corruption. BD is not responsible for any archival, backup or disaster recovery services with respect to Customer Data. No data generated, hosted or stored by or through a Product or BD is or should be considered an electronic medical record. Customer is responsible for printing or storing any data as may be necessary or appropriate to include in any medical record maintained by Customer.

15. Customer Data. BD may access and use Customer Data: (i) to provide Products, Support, and Implementation Services under the Agreement; (ii) to improve Products and to develop new Products to improve the delivery, quality, or safety of healthcare; (iii) for benchmarking; and (iv) for aggregate analysis. Notwithstanding the foregoing, BD may only use or disclose PHI in accordance with the BAA, as applicable. If Customer Data contains Protected Health Information as defined by 45 CFR §160.103, then BD will use such Data in conformance with the Privacy Rule and, before disclosing such Data, de identify such Data pursuant to 45 C.F.R. § 164.514 and dissociate such Data from Customer. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

16. Confidential Information; Retention of Rights.

- a. **Publicity.** A Party shall obtain the other Party's prior written consent, before (i) issuing any press release or other public disclosure regarding the Agreement; or (ii) using the other Party's name, trademark, service mark, logos, or trade dress (collectively, "**Marks**"). Each Party must comply with the other Party's requirements for use of either Party's Marks in any press release or other promotional material.
 - b. **Confidentiality Obligations.** Except as provided below, neither Party shall disclose Confidential Information to any other person, or entity other than the Federal Government, a Party's advisors for purposes consistent with the Agreement, or as required by law. In the event a Party in receipt of Confidential Information ("**Receiving Party**") is requested or becomes compelled, by a court of competent jurisdiction, administrative agency or other governmental body, to disclose Confidential Information of the Party that disclosed the Confidential Information ("**Disclosing Party**"), the Receiving Party will provide the Disclosing Party with prompt notice. BD's obligations in this paragraph and the exceptions in paragraph 16.c below supersede any obligations of BD or any BD representative contained in any confidentiality agreement or statement executed or acknowledged at the entry of any Customer facility, which agreements or statements are void.
 - c. **Exceptions.** The obligations of this confidentiality section do not apply to information that: (i) was in the public domain or was known to the Receiving Party before the information was received by the Receiving Party; (ii) is developed by the Receiving Party or on its behalf independently of the information disclosed by the Disclosing Party as shown by written record; (iii) is acquired by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; or (iv) becomes public knowledge without breach by the Receiving Party of any obligations of confidence to the Disclosing Party.
 - d. **Retention of Rights.** BD owns or has rights to all Intellectual Property embodied or embedded in, or practiced by, the Products, Documentation, or BD Data (as defined in a Schedule), and all rights therein. No services, including design technical support or advisory services, will be performed as works made for hire and BD retains full rights to design or market the same or similar designs for other customers. Customer acknowledges that BD is in the business of, among other things, creating custom Products for its customers. BD may create or sell any product or service to another customer provided that it will not use the Confidential Information of Customer in so doing. Some Products are sold subject to the terms of a label license. If Customer gives to BD any idea, proposal, suggestion or feedback, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements ("**Feedback**"), Customer gives to BD, without charge, royalties or other obligation to Customer, the right to make, have made, create derivative works, use, share and commercialize Customer Feedback in any way and for any purpose. Customer will not give Feedback that is subject to a license that requires BD to license its software, technologies or documentation to any third party because BD includes Customer Feedback in them.
- 17. Disclosure Requirements.** The value of any rebates, discounts or incentives provided to Customer may constitute a "discount or other reduction in price" under 42 USC §1128B(b)(3)(A) of the Social Security Act [42 USC §1320a-7b(3)(A)]. Customer shall satisfy any and all requirements imposed on buyers relating to discounts or reductions in price, including, when required by law, to disclose all discounts or other reductions in price received from BD and to accurately report under any state or federal health care program the net cost actually paid by Customer.
- 18. Termination.**
- a. **Termination of Agreement.** This Agreement may be terminated by Customer at any time, without cause, for any reason upon ninety days written notice to BD, subject to the following: i) Customer shall pay to BD an aggregate amount equal to the purchase price under this contract for all unpurchased Consumables remaining on the Agreement as determined by BD; and ii) all invoices must be paid in full, including any invoices pertaining to Consumable Purchase Shortfalls. Either party may terminate this Agreement if the other party is adjudged insolvent or bankrupt, or upon any assignment for the benefit of the other party's creditors, or upon the liquidation, dissolution or winding up of its business. In the event of a Reagent Rental or Lease, upon termination of this Agreement for any reason, Customer shall return the Equipment to BD, in as good condition as when Customer received it except for ordinary wear and tear, to a location and in a manner designated by BD and any costs associated therewith shall be borne by Customer and paid in accordance with Section 3. (Payment Terms).
 - b. **Termination of Service Plan.** Customer understands that only BD Personnel shall service BD Equipment. For Equipment purchased and owned by Customer, a Service Plan may be terminated at any time, without cause, for any reason upon ninety days written notice to BD. In the event any Service Plan is terminated for any reason, any Service required by Customer shall be billed at BD's then-current Time and Material rates. Customer shall receive no refunds and shall continue to receive Service through the end of the then-current Term year. Service Plans for Lab Automation/BD Kiestra™ Equipment may not be terminated by Customer prior to the expiration of the Service Plan Term.
 - c. **Termination for Ineligibility.** Either Party may immediately terminate the Agreement, as its sole remedy, if the other Party's key personnel is convicted of an offense related to health care or listed by a federal agency as being debarred, excluded, or otherwise ineligible for federal healthcare program participation.
 - d. **Termination for Cause.** Either Party may terminate this Agreement if the other Party commits a material breach, and, except with respect to a payment breach, fails to cure such breach within thirty days after notice of the breach. If BD terminates this Agreement for breach, Customer shall be obligated to pay the applicable fee for unpurchased Consumables as set forth in above.
- 19. Assignment.** Neither party may assign any of its rights or interest in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that either party shall be permitted to assign, delegate, sublicense or otherwise transfer this Agreement, in whole or in part, without the other party's consent to an affiliate or a successor in interest to substantially all of such party's assets to which this Agreement relates, whether by way of merger, acquisition, reorganization, spin-out, or otherwise.
- 20. No Resale.** Products purchased under this Agreement are NOT FOR RESALE and BD may, without limitation of other rights or remedies, prior notification or penalty, terminate this Agreement void any applicable warranty, if any Customer resells any Products or provides such Products for use by another party.
- 21. Contract Formation.** The Agreement is subject to withdrawal by BD at any time before acceptance. Customer accepts by signing and returning the Agreement. Upon Customer's acceptance, the Agreement and the related terms and conditions referred to in the Agreement (including, without limitation, any Exhibits, Schedules, Addenda, and Amendments) shall constitute the entire agreement relating to the products and services covered by the Agreement. The parties agree that they have not relied on any oral or written terms, conditions, representations or warranties outside those expressly stated or incorporated by reference in this Agreement in making their decisions to enter into this Agreement. No agreement or understanding, oral or written, in any way purporting to modify the terms and conditions of this Agreement, whether contained in Customer's purchase order, order acknowledgment, invoice, shipping release forms or other unilateral document of either party, shall be binding on BD unless hereafter made in writing and signed by BD's authorized representative. Customer is hereby notified of BD's objection to any terms inconsistent with this Agreement and to any other terms proposed by Customer in accepting this Agreement. Neither BD's subsequent lack of objection to any such terms, nor the delivery of the products or services, shall constitute an agreement by BD to any such terms.
- 22. General.** This Agreement may be amended only in writing, signed by both parties. All terms and conditions are severable and all remedies hereunder or at law or in equity are cumulative and nonexclusive. Either party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Each party is an independent contractor and does not have the authority to bind the other party. No third party is a beneficiary of this Agreement. All claims regarding this Agreement are governed by the laws of the State of New Jersey, except for any choice or conflict of law principles. This Agreement binds and inures to the benefit of the parties' permitted successors and assigns. All notices under this Agreement must be sent by overnight commercial delivery to the address set forth in this Agreement by each party. Any failure or delay by a party to comply with its obligations under this Agreement (other than any obligation for the payment of money) is not grounds for liability to the extent the failure results from factors beyond its reasonable control. References to the word "including," means "including, without limitation". A facsimile, electronic or scanned copy of this Agreement bearing authorized signatures may be treated as original.
- 23. Insurance.** BD will maintain: (i) commercial general liability insurance including Customer as an additional insured, with per occurrence limits and aggregate limits (including any excess or umbrella coverage) of not less than \$2,000,000 and \$5,000,000, respectively; (ii) Products and Completed Operations insurance, and at Customer's written request including Customer as an additional insured to the extent of the indemnification obligations hereunder with per occurrence limits and aggregate limits of not less than \$5,000,000 and \$5,000,000 respectively; (iii) professional errors and omissions insurance that contains cyber liability and privacy notification insurance with per

occurrence limits and aggregate limits of not less than \$1,000,000 and \$3,000,000; and (iv) workers' compensation insurance in compliance with statutory requirement and employers' liability insurance in an amount of not less than \$1,000,000 per occurrence. Notwithstanding the foregoing, the Parties understand and agree that BD may self-insure for all or part of the insurance required hereunder. If any of the required policies are written on a claims-made basis, then such policies will be maintained for a period of not less than 3 years following the termination or expiration of the Agreement. Customer may access BD's Memorandum of Insurance (MOI) at any time by using the web address: <https://marshdigital.marsh.com/marshconnect/viewMOI.action?i&client=D409>.

24. **Force Majeure.** Except for the obligation to pay fees when due, neither Party will be liable for any failure or delay in performance of its obligations hereunder by reasons of acts of God or the public enemy, war, terrorism, fire, flood, shortage or failure of suppliers, interruption or failure of telecommunication or digital transmission links, Internet disruptions, power failures and other circumstances beyond its reasonable control (each, a "Force Majeure Event") for as long as such Force Majeure Event continues. The Party so affected by the Force Majeure Event must give prompt written notice to the other Party and, to the extent practicable, describe in reasonable detail the nature of the Force Majeure Event. Either Party may terminate this Agreement if a Force Majeure Event continues for more than ninety continual days.
25. **Defense Production Act.** Notwithstanding anything to the contrary herein, Customer acknowledges and agrees that in the event the Defense Production Act is invoked and BD is directed to prioritize government purchase orders over commercial purchase orders, BD may not be able to fulfill quantities of Products ordered by or committed to Customer and BD will not be in breach of this Agreement.
26. **Survival.** Except as expressly set forth in this Agreement, Customer's payment obligations and Sections 12 (Indemnity), 13 (Limitation of Liability), 14 (Data Security), 15 (Customer Data), 18 (Termination), 20 (No Resale), 21 (Contract Formation), 22 (General), 24 (Force Majeure), 25 (Defense Production Act), and 26 (Survival) shall survive the expiration or termination of this Agreement.
27. **Additional Terms and Conditions.** The following terms and conditions shall be incorporated into the Agreement. In the event of conflict among the foregoing terms and conditions and these Additional Terms and Conditions, the foregoing terms and conditions shall supersede.
 - **Business Review.** On a quarterly basis, upon Customer's request, the Parties may review the Consumable Purchase Requirements under this Agreement ("Business Review").
 - **Improved Technology.** Notwithstanding anything to the contrary, and at BD's sole discretion, in the event BD releases new Equipment or Software with improved function, reliability, quality or advanced technology that exceeds the level of function, reliability, quality or technology of the Equipment or Software set forth in Exhibit A. Section 1. (Equipment) ("Improved Technology"), Customer may upgrade to such Improved Technology at Customer's sole expense, by written amendment executed by both parties.
 - **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

 **BD Exhibit C – Warranty and Service Terms and Conditions**

When BD performs service for Equipment pursuant to a Warranty or Service Plan, it will do so subject to the following terms and conditions:

1. **Service Plan.** Service Plans are available for post Warranty service coverage and, except as provided for herein, are not assignable by Customer and shall not pass to the benefit of any eventual transferee of the Equipment from Customer.
2. **Service.** Service shall be provided as indicated in Exhibit A. Section 6. (Service).
3. **Train the Trainer or Implementation Training.**
 - 3.1 **Train the Trainer.** BD Equipment that includes the Train the Trainer Training Course as part of its Equipment selling price, will be conducted Monday – Friday between 8:30 am and 5:00 pm with a duration as stated within the course curriculum. The training is limited to a maximum of four (4) students. The number of days/hours/facilities is Equipment specific, additional information is available upon request. Additional students or training are provided as optional services for an additional fee.
 - 3.2 **Implementation Training.** BD Lab Automation Equipment includes implementation training as part of its Equipment selling price, will be conducted Monday – Friday between 8:30 am and 5:00 pm with a duration as stated within the course curriculum. The training is limited to the number of students as provided for in the BD Training Brochure or BD Technical Training Program Table. The number of days/hours/facilities is Equipment specific, additional information is available upon request. Additional students or training are provided as optional services for an additional fee.
4. **BD Responsibilities.**
 - 4.1 **Service to be Performed.** With respect to the Equipment set forth in the Agreement to which these terms and conditions relate, and subject to these terms and conditions, BD agrees to send a Service Representative to perform, if applicable, (a) the number of preventive maintenance inspections included in the selected Service Plan (the “Preventive Maintenance”) and (b) unlimited emergency visits as reasonably requested by Customer to perform repairs (the “Repair Services”) (Preventive Maintenance and Repair Services, together, the “Services”). The Service Representative must be given full and free access to the Equipment. In addition, BD may, through an authorized service provider, provide Service on components and software manufactured by third parties in accordance with the warranty of such third-party manufacturer. It is the responsibility of Customer to register all third-party products and software with the third party for purposes of warranty and end user license. BD does not provide Service on computers, workstations, printers, or other items not listed as Equipment hereunder. BD may repair or replace any Equipment at its discretion in satisfaction of its obligations hereunder.
 - 4.2 **Preventive Maintenance Inspections.** During each Preventive Maintenance visit the Service Representative will evaluate Equipment performance and provide a preventative maintenance kit (if applicable) for use by the Service Representative. Calibrations, alignments, lubrication and part replacement will be performed as deemed necessary by BD to maintain the Equipment operation substantially in accordance with the published technical specifications for the Equipment.
 - 4.3 **Service Hours.** Telephone service is available 24 hours per day, 7 days per week. On-site service is available from 8:00 AM to 5:00 PM (local time) Monday - Friday, excluding BD observed holidays, unless otherwise specified in the Service Plan selected by the Customer.
 - 4.4 **Technical Support.** Customer may obtain support by calling BD's toll free number 800-638-8663. If efforts to correct problems by telephone or remote services are unsuccessful and on-site service is requested, a Service Representative will be dispatched to Customer's location.
 - 4.5 **Service Parts.** BD will provide all parts required to perform Repair Services (except for consumables), where on-site part inventory is initially supplied as part of the product offering. All parts must be returned to BD, unless specifically stated by BD. The use of new or like-new parts will be at the sole discretion of BD. BD is not obligated to provide parts for spares or inventory or service on any such parts.
 - 4.6 **Software Updates.** BD may issue Updates to its proprietary software at no charge to Customer. “Updates” are defined as bug and/or patch fixes, or modification to already existing features for the purposes of maintaining current functionality of the Equipment. Updates to third party software are not provided by BD.
 - 4.7 **Shipping & Handling.** Shipping & handling charges for parts that are covered under Warranty or Service Plans will be at no additional charge to Customer. Shipping & handling charges for Consumables and priority/rush delivery for parts are specifically excluded and will be billed to Customer, F.O.B. shipping point.
5. **Customer Responsibilities.**
 - 5.1 **Proper Environment.** Customer shall be responsible for adhering to good laboratory practices. Customer shall be responsible for providing and maintaining a proper environment such as temperature, humidity and ventilation, including utilities, power requirements and site specifications for size, weight and clearance, for the Equipment. A User's Manual, detailing this information, is provided to the Customer when the Equipment is purchased or as may otherwise be provided to Customer by BD.
 - 5.2 **Equipment Removal/Relocation.** Customer shall not alter, remove or relocate the Equipment without prior written approval from BD. In the event Customer alters, removes or relocates the Equipment, any Equipment warranty provided by BD will be null and void. In the event Equipment is altered, removed, or relocated for any reason, Customer agrees that such Equipment must be inspected by BD and, if possible, re-install such Equipment which will be billed at BD's then-current time and material rate.
 - 5.3 **Maintenance.** All maintenance and repairs to the Equipment required by the end-user under the User's Manual for such Equipment shall be the responsibility of the Customer.
 - 5.4 **Equipment Operation.** Customer shall operate the Equipment at all times in accordance with the User's Manual.
 - 5.5 **Operating System Security.** Customer shall maintain virus and malware protection and operating system security updates to network connected computing systems which run BD proprietary software and for backing up any information generated by the Equipment.
 - 5.6 **Safe Work Environment.** Customer shall maintain a safe work environment and comply with all applicable laws, rules and regulations relating to safety in order to ensure the safety of all Service Representatives and other BD employees and agents who enter Customer's premises. BD may, from time to time, visit Customer's facilities in which the Service Representative and other BD employees and agents perform Services hereunder, to audit safety compliance. Such audit would occur during working hours and at a time reasonably agreed to by the parties. BD, its affiliates, personnel, agents and subcontractors shall not be required to enter potentially hazardous areas. BD reserves the right to determine whether and under what circumstances its personnel, agents or subcontractors shall enter any premises. In no event will BD be obligated to perform Services if it is not, in its sole discretion, satisfied with respect to safety.
 - 5.7 **Biosafety Level Laboratories.** In the event the Equipment being serviced has, at any time, been operated in a location that is designated as a Biosafety Level 4 laboratory (a “BSL 4” laboratory) according to the then-current edition of “Biosafety in Microbiological and Biomedical Laboratories published by the U.S. Department of Health and Human Services, or that would in BD's opinion fall into such category were it located in the United States, it shall be the responsibility of Customer to remove from such laboratory or other facility and decontaminate to the satisfaction of BD, in its sole discretion, the Equipment before any work is performed on the Equipment. All costs associated with such removal, decontamination, and re-installation shall be borne by Customer. With respect to laboratories operated under the designation Biosafety Level 3 (a “BSL 3” laboratory), BD reserves the right to evaluate the conditions existing therein. Customer shall fully cooperate with regard to safety, including but not limited to affirmative disclosures related to any hazards in such facilities. BD may conduct a risk assessment and require remediation to its satisfaction before any work is performed on any Equipment located in a BSL 3 laboratory. If BD determines that laboratory procedures and policies are inadequate to provide a safe environment for service personnel, BD reserves the right to refuse service support until any such inadequacies are cured to BD's satisfaction. Customer agrees to notify BD of its status as a BSL 3 or BSL 4 laboratory and to provide notice of all relevant protocols and any changes thereto. All required safety training, personal protective equipment, instrument test equipment and necessary tools required for instrument service located in a BSL 3 laboratory must be supplied by the Customer. BD reserves the right to discontinue any and all BSL 3 laboratory instrument service until appropriate personal protective equipment and tools are furnished by the Customer. Calibration of the tools and test equipment are the sole responsibility of the Customer. No parts from Equipment in a BSL 3 or BSL 4 laboratory may be returned to BD and must be disposed of by the Customer. Service Representatives are not required to take BD tools and calibration equipment into the BSL 3 laboratory space. If tools are not available, BD is not obligated to provide on-site repair service. In the event the Customer is unable to make the

Equipment available for scheduled preventative maintenance in a sixty (60) day period from the initial planned service date, Customer waives the right to have that scheduled service visit performed during the contract year or thereafter. No compensation will be provided by BD for any missed preventative maintenance services.

- 5.8 Laboratory Information System.** If applicable, Customer shall provide accessibility to Customer's Laboratory Information System ("LIS") and will be limited to a one-time on-site connection ("LIS Connection"). Any such LIS Connection shall, be performed at the time of installation of the Equipment. Customer will ensure availability of the LIS Vendor at time of the LIS Connection. Any services required as a result of changes to Customer's LIS or post installation LIS activity or maintenance may be at Customer's expense and shall be billed at BD's then prevailing rate for parts, labor, material and travel. Optional services for an additional fee are available for connectivity to new or upgraded systems post initial installation of the Equipment.
- 5.9 Remote Services Solution.** For Equipment with BD Assurity Linc™ capability or other BD supplied remote services solution ("RSS"), Customer shall provide high-speed Internet access and firewall modifications to enable connectivity, if applicable. If Customer's system, connectivity, or personnel prevent BD from performing BD Remote Support on the Equipment, provided such Equipment is RSS-enabled ("RSS-Enabled Equipment"), then: (i) any Guaranteed Response Time applicable to that Service Plan will be void; and (ii) Customer will be billed at BD's then prevailing rate for parts, labor, material and travel, for any onsite services. RSS is required to provide support for security patches and assistance with cybersecurity incident response. If Customer chooses not to allow RSS, security patch management and cybersecurity incident response will be the sole responsibility of Customer.
- 5.10 Service Inspection.** If the Equipment has not been maintained by BD for three or more months prior to the Agreement Effective Date, an inspection may be required to ensure that the Equipment meets BD Service acceptability standards. This inspection, as well as any repairs required, will be charged at BD's then prevailing rate for parts, labor, material and travel.
- 5.11 HEPA Filters.** Customer is responsible for the certification and replacement of HEPA filters, as necessary.
- 6. Exclusions.** The following items and/or Services are not included in this Agreement. Services performed by BD on the Equipment made necessary as a result of any of the following shall be billed to the Customer at BD's then prevailing rate for parts, labor, material, and travel expenses.
 - 6.1** Service relating to decontamination, removal of inhibition matter, damage caused to the Equipment or any part thereof by accident, the elements, power anomaly, Acts of God, alteration, misuse or abuse, relocation or reinstallation of Equipment.
 - 6.2** Service relating to damage caused to the Equipment or any part thereof by the installation or use of unauthorized parts, Consumables or peripheral equipment or negligence.
 - 6.3** Services performed by BD on a weekend or BD designated holiday, unless otherwise indicated in the Service Plan (such Services are subject to availability and will be billed at BD's then current weekend/holiday rates).
 - 6.4** Service on computers, workstations, printers, or other items not listed as or provided with the Equipment hereunder, non-BD supplied workstations, Services required as a result of compromised power supply, or uninterrupted power supply, unless otherwise indicated in the Service Plan.
 - 6.5** Service relating to a failure to comply with Exhibit C. Section 5. (Customer Responsibilities) or any other damage to the Equipment resulting from Customer's negligence.
 - 6.6** Optional services are available to purchase by the Customer for an additional fee. Optional services may include, but are not limited to, extended hours of coverage, relocation of instrument and peripherals, educational seminars, BD Facility training courses, LIS connectivity and preventative maintenance. Optional services are not a part of the Warranty or Service Plan and shall be billed at BD's then prevailing rate for parts, labor, material and travel.
- 7. Professional Services.** In addition to Services set forth in this Agreement, Customer may elect to obtain other services from BD in accordance with a relevant Statement of Work entered into by BD and Customer ("Professional Services"), and subject to Customer's payment of the Professional Services Fees and Expenses for such Professional Services as set forth in such Statement of Work. BD will be entitled to cease performing any further Services or Professional Services, as applicable, in the event Customer fails to pay any properly invoiced amounts and such failure continues after ten (10) days' notice by BD of its request for payment and intention to cease performing such services.
- 8. Operating Software Upgrades.** BD will provide Services necessary to keep the Equipment performing in accordance with the material specifications of the applicable User Manual ("Properly Performing"). If BD determines that Equipment cannot be made Properly Performing through Services, then BD will replace portions of the Equipment or upgrade the Operating System, as is necessary to restore the Equipment to Properly Performing. BD labor will be limited to the BD stand-alone application and BD network. BD labor including work performed if application is connected to the Customer's internal network, LIS, Non-BD clients, and domains will be billed at BD's then-current Time and Material rate. "Upgrades" are defined as new functionality to either software or hardware that does not exist in the current configuration and which requires additional payment by the Customer. "Functionality" is defined as a combined set of features that Equipment can perform. Upgrades to third party software are not provided by BD.
- 9. Service Response Time.** If Customer has purchased a Service Plan that provides a Service Response Time, BD guarantees that a Service Representative will arrive at the location of the Equipment identified in Exhibit A. Section 1 (Equipment), as the case may be, within the timeframe set forth in the selected Service Plan, calculated from the time of dispatch ("Service Response Time"). If BD is solely responsible for failing to meet the Service Response Time, then as Customer's sole and exclusive remedy, BD will provide a credit to be applied to the Customer's next Service Plan payment, provided that Customer gives written notice to BD within thirty (30) days of the date BD failed to meet the Service Response Time.
- 10. Survival.** Except as expressly set forth in this Agreement, Customer's payment obligations and this Section shall survive the expiration or termination of this Agreement.

BD INTEGRATED DIAGNOSTIC SOLUTIONS SERVICE LEVELS

	Essential Care	Complete Care
Technical Phone Support (M - F / 8A - 8P)	X	
Technical Phone Support 24/7		X
Clinical Phone Support		X
Priority Phone Support		X
Remote Diagnostic (BD RSS)	X	X
Contracted Time Preventative Maintenance (M - F / 8A - 5P)	X	X
Contracted time of repair (M - F / 8A - 5P)	X	
Contracted time of repair (M - Su / 8A - 5P)		X
Corrective emergency response time 2 business days	X	
Corrective emergency response time next business day		X
Instrument software version updates (at time of PM)	X	X
Operating System and Hardware Upgrades 25% off list price		X
Additional Training/Retraining 25% off list price		X
LIS Interface Change Support 25% off list price		X
Instrument Move 25% off list price		X

PREVENTATIVE MAINTENANCE

	Preventative Maintenance 1 Every Other Year	Preventative Maintenance 1 Per Year	Preventative Maintenance 2 Per Year
BD Affirm™	-	-	-
BD Viper™ LT System			X
BD Viper™ XTR		X	
BD BACTEC™ FX		X	
BD BACTEC™ FX40	-	-	-
BD BACTEC™ MGIT™ 320/960	-	-	-
BD MAX™ System			X
BD Totalys™ SlidePrep System		X	
BD Totalys™ MultiProcessor		X	
BD PrepStain™ Slide Processor		X	
BD PrepMate™ System		X	
BD FocalPoint™		X	
BD Phoenix™ 100 System			X
BD Phoenix™ AP System		X	
BD Phoenix™ M50 System	X		
BD NUC Computer	-	-	-

*BD Affirm. The only available Service Plan for BD Affirm is "Single Swap." Single Swap service allows for unlimited replacements of the covered Affirm Equipment with a new or refurbished Affirm, at BD's option, at no additional cost. The replacement Affirm will be shipped within two (2) business days after Single Swap Option is used. Single Swap Service does not include Preventative Maintenance.