

MA 18P 2005190000000000145
NEW

State of Maine



Master Agreement

Effective Date: 06/17/20

Expiration Date: 11/15/22

Master Agreement Description: 3 Year MGIT Rental with Media, Supplies, and Shipping

Buyer Information

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

Issuer Information

Lisa Robbins 207-287-1709 ext. lisa.robbins@maine.gov

Requestor Information

Lisa Robbins 207-287-1709 ext. lisa.robbins@maine.gov

Agreement Reporting Categories

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VC1000007971

Vendor Name

BECTON, DICKINSON & COMPANY

Alias/DBA

SYSTEMS

Vendor Address Information

1 BECTON DR

FRANKLIN LAKES, NJ 07417

US

Vendor Contact Information

Customer Service
1-800-638-8663 ext.
bd_customer_service@bd.com

Commodity Information

Vendor Line #: 1

Vendor Name: BECTON, DICKINSON & COMPANY

Commodity Line #: 1

Commodity Code: 93863

Commodity Description: 3 Year MGIT Rental with Media, Supplies, and Shipping

Commodity Specifications:

Commodity Extended Description: AS PER THE SPECIFICATIONS ATTACHED AND MADE PART OF THIS MA.

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
Contract Amount	Service Start Date	Service End Date
0.00	06/17/20	11/15/22
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Please see authorized signatures displayed on the next page

Each signatory below represents that the person has the requisite authority to enter into this Contract.
The parties sign and cause this Contract to be executed.

State of Maine - Department of Administrative and Financial Services

DocuSigned by:
Jaime Schorr 6/17/2020

Signature Date

Jaime C. Schorr, Chief Procurement Officer

Vendor

DocuSigned by:
Julia Bell 6/17/2020

Signature Date

Julia Bell Sr Mgr Commercial Contracting

Print Representative Name and Title

RIDERS

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference: (check all that apply)
<input checked="" type="checkbox"/>	Rider A – Scope of Work and/or Specifications
<input checked="" type="checkbox"/>	Rider B – Terms and Conditions
<input checked="" type="checkbox"/>	Rider C - Exceptions
<input type="checkbox"/>	Bid Cover Page and Debarment Form
<input checked="" type="checkbox"/>	Debarment, Performance, and Non-Collusion Certification
<input type="checkbox"/>	Price sheet (attach excel spreadsheet to post on website)
<input checked="" type="checkbox"/>	Other – Included at Department's Discretion

RIDER A
Scope of Work and/or Specifications

This master agreement is for the rental of the BacTec MGIT 960 mycobacteria test instrument (S/N: MG2940) and purchase of BacTec Mycobacterium Growth Index Tubes (MGIT) 960 and Bactec MGIT supplement Kits made by Becton, Dickinson and Company (BD), to grow cultures for the isolation of TB and other mycobacterium.

The vendor agrees to supply the quoted equipment, service plan, and consumable commodities at the agreed upon unit prices. Delivery Orders (DOs) may be submitted as needed until the expiration date. All DOs will be subject to the prices, terms, and conditions of this master agreement. Prices shall remain firm until the expiration date of the master agreement.

All prices of equipment, service plan, and consumables to be supplied are per agreement #MGITRRwserv.08062019MR attached and hereby incorporated into this contract. All quoted prices are in effect until 11/15/2022.

**RIDER B
TERMS AND CONDITIONS**

- 1. DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
 - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
 - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
 - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
 - d. The term “Division” shall refer to the State of Maine Division of Purchases.
 - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
 - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO), BD Acquisition Agreement (#MGITRRwserv.08062019MR) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.

- 2. WARRANTY:** The Contractor warrants the following:
 - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
 - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
 - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
 - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
 - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder pursuant to the Limited Warranty provisions set forth in the Agreement. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

3. TAXES: Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

4. PACKING AND SHIPMENT: Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified in the Agreement. Articles shall be suitably packed to secure lowest transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY: Delivery should be strictly in accordance with delivery schedule, to the extent any such schedule is provided to and approved by Contractor. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

6. FORCE MAJEURE: The performance of an obligation by a party under this Agreement shall be excused in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute (each, a "Force Majeure Event"), provided that any such Force Majeure Event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. In the event of any such Force Majeure Event the time period for performance of the obligation shall be excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

7. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation

charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

8. INVOICE: The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

9. ALTERATIONS: If any alterations are made to any portion of the Agreement, the contract amount or amounts shall be adjusted accordingly to reflect such alterations. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

10. TERMINATION: The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times provided and agree to by Contractor, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed because of its insolvency.
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so, pursuant to the Termination provision set forth in the Agreement.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

11. NON-APPROPRIATION: Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the

Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

13. INTERPRETATION: This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

14. DISPUTES: The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Courts will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

15. ASSIGNMENT: None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

16. STATE HELD HARMLESS: The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

17. SOLICITATION: The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

18. WAIVER: The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

19. MATERIAL SAFETY: All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

20. COMPETITION: By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

21. INTEGRATION: All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

RIDER C
EXCEPTIONS

Exceptions to Rider B Terms and Conditions:

1. DEFINITIONS:

f. The term "Contract" or "Agreement" shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO), **BD Acquisition Agreement (#MGITRRwserv.08062019MR)** or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.

2. WARRANTY:

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder **pursuant to the Limited Warranty provisions set forth in the Agreement.** The Division of Purchases shall give written notice of observed defects with reasonable promptness.

4. PACKING AND SHIPMENT:

Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified **in the Agreement.**

5. DELIVERY:

Delivery should be strictly in accordance with delivery schedule, **to the extent any such schedule is provided to and approved by Contractor.**

6. FORCE MAJEURE:

The performance of an obligation by a party under this Agreement **shall be excused** in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute (**each, a "Force Majeure Event"**), provided that any such Force Majeure Event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. **In the event of any such Force Majeure Event the** time period for performance of the obligation **shall be** excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

9. ALTERATIONS:

If any alterations are made **to any portion of the Agreement,** the contract amount or amounts shall be adjusted accordingly **to reflect such alterations.** In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

10. TERMINATION:

The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times **provided and agree to by Contractor,** or

- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed because of its insolvency.
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so, pursuant to the Termination provision set forth in the Agreement.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

14. DISPUTES:

The **Courts** will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Courts will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

Debarment, Performance, and Non-Collusion Certification

By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
 - b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
 - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
 - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
 - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
 - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
 - c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*
- Failure to provide this certification may result in the disqualification of the Bidder's proposal, at the discretion of the Department.**

To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.

Name: Julia C Bell	Title: Sr Mgr Commercial Contracting
Authorized Signature: <i>Julia C Bell</i>	Date: June 17, 2020



BD ACQUISITION AGREEMENT

RECEIVED

DEC 18 2019

HETL

BD Agreement Number: MGITRRwserv.08062019MR

Date: December 18,
2019~~September 17, 2019~~

This agreement ("Agreement") is by and between Maine Health and Environmental Testing ("Customer") and BECTON, DICKINSON AND COMPANY, through its BD Life Sciences – Diagnostic Systems business unit ("BD"), each as identified in the applicable signature block below. BD agrees to provide and Customer agrees to pay for the goods and/or 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); and
- 3) Warranty and Service Terms and Conditions (Exhibit C);

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. The offer of this Agreement expires as stated below unless otherwise indicated. This Agreement is subject to pricing, configuration and credit approval.

- **Term of Agreement ("Term"):** November 16, 2019 through November 15, 2022
- **Price Protection:** 12 months
- **Payment Terms:** Net 30 days
- **Shipping option:** Consumables: Direct
- **Warranty Period:** N/A
- **Service:** 5 day service at an annual premium
- **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: Maine Health & Environmental Testing
221 State Street
Augusta, ME 04330

BD: Becton, Dickinson and Company, through its
BD Life Sciences – Diagnostic Systems business unit

7 Loveton Circle
Sparks, MD 21152
www.bd.com

Agreed to By: *Lisa Robbins* ^{*for Nancy Farris*} *Sarah Carey*
Print Name: *Lisa Robbins*
Print Title: *CIV Office Mgr*
Date: *12/18/19*

Agreed to By: *Julia C Bell*
Print Name: Julia C Bell
Print Title: Sr Mgr Commercial Contracting
Date: December 18, 2019

**BD Exhibit A****Customer Pricing and Commitments**

1. **Equipment.** The Equipment covered by this Agreement is set forth below. For a cash purchase or monthly lease, Customer agrees to purchase or lease 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.

Equipment Description	Serial Number	Unit Qty.	Acquisition Method
MGIT 960	MG2940	1	Rental*

2. **Equipment Location.** The Equipment shall be located at the following address:

Maine Health & Environmental Testing
221 State Street
Augusta, ME 04330

3. **Consumable Purchase Requirements.** During the Term, Customer agrees to purchase the consumables (the "Consumables") as set forth below.

Consumable Description	SKU/CAT#	Annual Test Quantity	Monthly Target Amount	Unit Pricing	Case/Kit Pricing
BBL MGIT 7ml Tube	245122	3,000	250	\$7.62	\$761.75
BACTEC MGIT Supplement Kit	245124	3,000	250	\$0.70	\$69.60
Calibrator – 17 tubes	445871	As needed	As needed	N/A	\$123.28

Monthly Target Amounts will not be enforced as provided in Exhibit B, Section 2 (Consumable Purchase Shortfall) until twelve (12) months after the date the Equipment is installed ("Installation Date") (the "Ramp-Up Period").

4. **Training.** The following training will be provided for the Equipment: N/A
5. **Service.** Customer has selected the following Service Plans for the Equipment identified Section 1 above during the term of this Agreement:

Equipment Description	Service Plan	Term (Months)	Unit Qty.	Total Annual Cost	Total Term Cost
BD BACTEC MGIT 960	Comprehensive	36	1	\$7671.25	\$23,013.75



BD Exhibit B

Standard Terms and Conditions

1. **Pricing.** Prices for Consumables will remain firm for a period of twelve (12) months after the Effective Date. After such period, prices are subject to an increase of 3% per annum to be applied to the then current contract price effective upon each 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 Consumables 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, invoicing, payment, delivery and return terms. Prices included in this Agreement have been and/or will be notified by BD to its applicable authorized distributors as the maximum price the distributors may charge Customer for such Consumables.
2. **Consumable Purchase Shortfall.** Consumable Purchase Requirements may, at BD's sole discretion, be reviewed and/or reconciled by BD from time to time. If Customer's Consumable Purchase Requirements fail to average the Monthly Target Amount over a period of three or more months (the "Compliance Period"), BD may, in its sole discretion, 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; (2) revise the then current Consumables pricing to reflect such lower volumes; or (3) extend the Term to allow Customer to make up for such shortfall. If Consumable purchases exceed the committed volume over the Compliance Period, excess purchases will be applied towards the next Compliance Period. BD shall give Customer written notice of any adjustment under this Section.
3. **Payment Terms.** The terms in effect under this Agreement are net thirty (30) days from date of invoice. Invoices thirty (30) 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.
4. **Taxes.** Customer shall pay all taxes and assessments including interest and penalties which might be levied against the Equipment and Consumables 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. In the event of a reagent rental or lease, all Equipment will remain the property of BD, who shall hold exclusive title. Customer shall not remove any markings from the Equipment identifying BD as the owner. The Equipment shall be kept free from any and all liens, claims and encumbrances and shall not be leased, subleased, transferred or assigned. In the event of a cash sale to Customer, title shall pass to the Customer upon BD's receipt of full payment for the Equipment from Customer.
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 and Labeling and other written materials. In the event of a reagent rental or lease, Customer shall bear all risk of loss and damage with respect to the Equipment for any cause from the Delivery Date until such Equipment is returned to BD. If any of the Equipment is damaged or destroyed during the Term while in Customer's possession, Customer shall give BD immediate written notice of same. At such time, BD shall determine, in its sole discretion, whether to replace or to repair the Equipment. The expense of any such repair or replacement shall be borne solely by Customer. In the event of a cash sale, Customer shall bear all risk of loss and damage with respect to the Equipment for any cause from the date of Delivery. BD assumes risk of loss for Consumables until delivery to Customer.
8. **Approved Use.** Customer shall use the Equipment and Consumables in a manner consistent with the User's Manual, Package Insert, and other Labeling (including the limitations and restrictions contained therein). Any use of the Equipment and Consumables in violation thereof, or use outside the scope of the clearance and/or approval BD received from the US Food and Drug Administration ("FDA") or the substitution of any constituent consumable, parts or accessory not within such FDA clearance and/or approval, is at the Customer's sole and exclusive risk.
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 (6) 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 (10) 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.** In the event of a cash sale of Equipment to Customer, BD warrants to the Customer that during the twelve (12) 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 (90) 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 Labeling. (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 be 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/bsd-eula.html.



BD Exhibit B

Standard Terms and Conditions

- 11. Software Applications Addendum/Agreement.** To the extent applicable, Customer shall execute a Software Applications Addendum in the form attached hereto as Exhibit E, which is incorporated by this reference herein.
- 12. Indemnity.** BD shall indemnify, defend and hold harmless Customer, its officers, directors, and employees, from any and all third party claims, demands, judgments, damages, losses, liabilities, suits, costs and expenses (including the reasonable attorney's fees, reasonable investigative costs and court costs) (collectively, the "Third Party Losses") arising out of or relating to the breach by BD of its express warranty provided in this Agreement as described in Section 9 (Limited Warranty). Customer shall indemnify and hold harmless BD its officers, directors, and employees from any and all Third Party Losses arising from or relating to (i) the use of non-BD products with the Equipment and/or Consumables (except to the extent otherwise approved by BD in advance in writing); (ii) the use of the Equipment and/or Consumables outside the scope of any FDA clearance and/or approval relating thereto or outside the scope of the limitations and restrictions set forth in the Equipment User's Manual and the Labeling; (iii) the possession, use or operation of the Equipment and Consumables including the actions of Customer and/or its health care providers in determining the course of patient care, except, in each such case, to the extent that any such Third Party Loss arises out of the failure of the Consumables and/or Equipment to conform with the express warranty set forth in Section 9 (Limited Warranty).
- 13. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL BD BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER SUCH DAMAGES ARE CHARACTERIZED IN TORT, NEGLIGENCE, CONTRACT, OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER BD HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF ESSENTIAL PURPOSE OF A LIMITED REMEDY; AND IN NO EVENT SHALL BD'S LIABILITY EXCEED (1) IN THE CASE OF ANY CONSUMABLES OR EQUIPMENT NOT MEETING BD'S EXPRESS WARRANTY SET FORTH HEREIN, THE REPLACEMENT OR REFUND OF THE PURCHASE PRICE PAID FOR SUCH CONSUMABLES OR THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT, AS THE CASE MAY BE, AND (2) FOR ALL OTHER CLAIMS, \$50,000. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND THAT BD WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ON THE TERMS SET FORTH HEREIN WITHOUT SUCH LIMITATIONS OF LIABILITY.
- 14. Data Security.** Customer hereby acknowledges and agrees that (i) it has read, reviewed and understands any and all Product Security White Papers located at <http://www.bd.com/aboutbd/productsecurity/> related to the Equipment; (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 and (2) Customer has implemented reasonable and appropriate safeguards to protect data, programs and systems associated with the Equipment in accordance with legal requirements and industry standards, including appropriate physical safeguards. Accordingly, Customer agrees to fully indemnify, defend and hold harmless BD its officers, directors, and employees for any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, related to or directly or indirectly caused by any data breach or damage to programs and systems associated with the Equipment.
- 15. Use of Data.** "Data" means, collectively, data contained in any BD System(s) or consumables associated with the Software, data created or stored through the use of any BD System(s) or consumables associated with the Software, and/or data created or collected during the performance of Services. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E. Subject to the Business Associate Schedule in effect between the Parties as of the Effective Date, Customer grants BD the right to access and use Data for any lawful purpose, including without limitation, research, benchmarking, and aggregate analysis (i.e., more than one hospital). If 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 CFR §164.514 and dissociate such Data from Customer.
- 16. Confidential Information.** Each party will keep the Confidential Information disclosed to it by the other confidential. Neither party will use any Confidential Information disclosed to it by the other for any purpose other than solely for the purposes set forth in this Agreement. Neither party will disclose or permit disclosure of any Confidential Information of the other party to third parties, other than to and to the minimum extent necessary: (a) directors, officers, trustees, employees, consultants, attorneys, accountants, and agents of the receiving party who require that information in order to fulfill this Agreement and who are bound by nondisclosure obligations that are at least as restrictive as those set forth in this
- Section 16 or (b) to comply with applicable law. Each party will be liable for misuse and/or improper disclosure of the other's Confidential Information by its directors, officers, trustees, employees, consultants, attorneys, accountants and agents. Each party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention. Upon termination or expiration of this Agreement, each party will return all written materials, whether prepared by it or the disclosing party, that contain any Confidential Information of the other party. Except for patient or medical information, "Confidential Information" will not include any information that the receiving party can demonstrate with documentary evidence: (i) was previously known to receiving party; (ii) is or becomes publicly available, through no fault of receiving party; or (iii) is disclosed to receiving party by a third party having no obligation of confidentiality to disclosing party. If Confidential Information is required to be disclosed pursuant to the order or requirement of a court, administrative agency, or other government body, the receiving party will take all reasonable steps to provide the disclosing party with sufficient prior notice to contest the order or requirement. "Confidential Information" means any nonpublic information of a party, in oral, written, graphic or machine-readable form, including, without limitation, that which relates to medical information concerning patients and patient records, trade secrets, research, product plans, products, inventions, processes, designs, algorithms, source code, programs, software, business plans, agreements with third parties, services, customers, marketing, finances, and any additional nonpublic information of a party which is designated as confidential or proprietary by the disclosing party at the time of disclosure, or which considering all the circumstances surrounding the disclosure, ought reasonably to be understood by the receiving party to be confidential. Without limiting the generality of the foregoing, the Software, Documentation and the terms and pricing under this Agreement are expressly acknowledged by Customer as being the Confidential Information of BD.
- 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(b)(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.** This Agreement may be terminated by Customer at any time, without cause, for any reason upon ninety (90) days written notice to BD, subject to a cash payment by Customer in an aggregate amount equal to the purchase price under this contract for all unpurchased Consumables remaining on the Agreement as determined by BD per the original commitment in Section 3 (Consumable Purchase Requirements) of Exhibit A. At time of termination, all payments must be current, including any invoices pertaining to Consumable purchase shortfalls, as described in Section 2 (Consumable Purchase Shortfall). In addition, either party may terminate this Agreement if: (i) the other party commits a material breach of this Agreement and the notice of the breach is not cured within thirty (30) days after the receipt of such notice (or, if such breach, by its nature, is a curable breach that is not curable within such thirty (30) day period, in the event the breaching party does not initiate diligent efforts to cure such breach within such thirty (30) day period and thereafter diligently pursues such cure); or (ii) 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. If BD terminates this Agreement under this Section, Customer is still obligated to pay the applicable fee for unpurchased Consumables as set forth above. 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. Any such return of Equipment shall be in BD's sole discretion and any costs associated therewith shall be borne by Customer and paid in accordance with Section 3. Payment Terms of this Agreement.
- 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.** Customer may not resell Consumables or distribute them to any third parties under any circumstances. In the event title of the Equipment passes to Customer and Customer resells the Equipment to a third party, BD, in its sole discretion, may (i) reject any request by such third party for BD to provide goods and services associated with the Equipment, including consumables, reagents, spare parts, training, support and maintenance; (ii) void all Equipment warranties; and (iii) require that the third party compensate BD for all goods and services necessary to restore the Equipment to BD's designated standards. Accordingly, in the event of a resale to such a third party, Customer agrees to (1) inform the third party that BD has no obligation to provide any goods or services to the third party with respect to the Equipment, and all Equipment warranties hereunder are nontransferable and do not extend to the third party; and (2) require the third party to inform any other party that may subsequently purchase the Equipment of the resale restrictions of this Section 20 (No Resale).

**BD Exhibit B****Standard Terms and Conditions**

- 21. Contract Formation.** The Agreement is subject to withdrawal by BD at any time before acceptance. Customer accepts by signing and returning the Agreement or by sending a purchase order in response to 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, without limitation, 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 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 three (3) years following the termination or expiration of this Agreement
- 24. 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, 18 (Termination), 20 (No Resale), 21 (Contract Formation), 22 (General), and 24 (Survival) shall survive the expiration or termination of this Agreement.

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

When Becton, Dickinson and Company, through its BD Life Sciences - Diagnostic Systems business unit, ("BD") performs service for instrumentation ("Equipment") pursuant to an Equipment or Parts Warranty or a Service Plan purchased under this Agreement, it will do so subject to the following terms and conditions:

1. **Service Plan.** Upon purchase of a Service Plan ("Purchased Service Plan"), Customer is obligated and responsible for payment in full for the Service Term. Service Agreements are available for post Warranty service coverage and are not assignable by Customer and shall not pass to the benefit of any eventual transferee of the Equipment from Customer. Service Agreements may not be terminated by Customer prior to the end of the Term of such Agreement
2. **Train the Trainer.** BD Equipment that includes the Train the Trainer Training Course as part of its solution selling price, will be conducted M-F 8:30 am to 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. For Lab Automation products, implementation training is specifically defined as part of the product offering.
3. **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 and Upgrades.** BD may, at its discretion, from time to time hereafter, issue Updates to its proprietary software at no charge. Updates are defined as bug and/or patch fixes, error correction, equipment enhancement or modification to already existing features for the purposes of maintaining current functionality of the Equipment. Updates and Upgrades to third party software are not provided by BD. A charge may apply for Upgrades to BD proprietary software. 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 each BD product/solution can perform. In the event hardware requires an Upgrade to support the installation of software Upgrades, the Customer shall be responsible for the purchase of such hardware.
 - 4.7 **Shipping & Handling.** Shipping & handling charges for standard next day delivery of replacement parts that are covered under Warranty or Service Plans will be at no additional charge to Customer. Shipping & handling charges for reagents and consumables and priority/rush delivery for parts are specifically excluded and will be billed to Customer.
4. **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.
 - 5.3 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. All operation of the Equipment shall be performed by, or under the direct supervision of, a qualified operator who has completed the BD Training Course.
 - 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 shall 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-



BD Exhibit C

Warranty and Service Terms and Conditions

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 or Uptime 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, either by Warranty or Service Agreement, 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. 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 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 4 (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 instruments 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.
- 6. Professional Services.** In addition to warranty and post-warranty Services, 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 warranty and post-warranty 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.
- 7. Uptime Guarantee.** In the event Customer purchases Enhanced or Elite Service Plans and to the extent applicable, the Uptime Guarantee attached hereto as Exhibit F, which is incorporated by this reference herein, shall apply.
- 8. 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.
- 9. 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.

State of Maine Waiver of Competitive Bidding Request Form

DHHS/DCM Contract Administrator:	Chris Moiles	Office/Division/Program of Contract Administrator:	DHHS, MeCDC, Health and Environmental Testing Laboratory, Sue Dowdy
Est. Contract Amount:	\$ 86,719	Contract or RQS Number:	RQS 10A 20190917*346
		DHHS Agreement Number:	CD0-20-54MA01
Proposed Start Date:	11/16/2019	Proposed End Date:	11/15/2022
Vendor/Provider Name, City, State:	Becton, Dickinson and Company P.O. Box 28983 New York, NY 10087-8983		
Short Description of Good or Service:	Three-year Agreement for rental of the BacTec MGIT 960 mycobacteria test instrument (S/N: MG2940) and purchase of BacTec Mycobacterium Growth Index Tubes (MGIT) 960 and Bactec MGIT supplement Kits made by Becton, Dickinson and Company (BD), to grow cultures for the isolation of TB and other mycobacterium. The MGIT 960 is widely used across the United States because of its accuracy and ease of use.		
Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.		To be completed by the Division of Procurement Services Posting dates on Division of Procurement Services website: From: <u>11/18/2019</u> To: <u>11/25/2019</u>	
Notice of Intent to Waive Competitive Bidding Number:	NOI# 1120191886		
1. Statutory Justification State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.			
A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;			
B. The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;			
<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the</i>		<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> Signature:	
		Printed Name:	Date:

State of Maine Waiver of Competitive Bidding Request Form

	<i>Governor's "designee") sign and date on the right.</i>	
X	C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;	
	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;	
	E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;	
	<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i>	
	F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;	
	G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.	
	If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:	
Please note that the following four points below (#2 through 5) <u>all</u> require a response.		
2. Description of Specific Need		
Please identify, and fully describe, the specific problem, requirement, or need the resulting non-competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.		
<p>The identification of Mycobacterium tuberculosis complex (MTBC) is essential for public health. MTBC continues to be a major cause of morbidity and mortality worldwide and is now the leading infectious killer responsible for more deaths than HIV and malaria. In Maine, we culture and isolate MTBC using the 7H10 MGIT broth that is incubated in the MGIT 960. Additionally, BD manufactures a supplemental kit that is a mixture of antibiotics that reduce the number of contaminating bacteria in the culture. The use of the BacTec MGIT 960 allows for the rapid identification of MTBC, decreasing the turn-around time for results and reducing the lag-time before the patient can start chemotherapy to kill the infection.</p>		

State of Maine Waiver of Competitive Bidding Request Form

The BacTec MGIT 960 is used country wide and allows for the quick isolation of MTBC. The isolation of MTBC allows state Epidemiologists to control the mycobacteria infection on a case by case basis, striving to eliminate the disease all together. There is no other comprehensive system on the market that could replace the BacTec MGIT 960, therefore, it is essential that we continue to use this culture system for rapid identification of MTBC.

3. Availability of other Public Resources

Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.

There are no state resources available to provide this service. With the lease of the MGIT 960 (S/N: MG2940), the customer agrees to purchase consumables from BD Dickenson.

4. Cost

Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are **fair and reasonable**.

The cost is fair and reasonable considering we rent the equipment and must purchase the media and consumables from this vendor for specific testing purposes.

5. Future Competition

Please describe potential opportunities which may be available to foster competition for these goods or services in the future.

The department does not intend to RFP this service at this time.

State of Maine Waiver of Competitive Bidding Request Form

Please note that only one of the two points below (“Uniqueness” or “Timeframe”) requires a response. Requesting Departments are not required to respond to both points.

6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

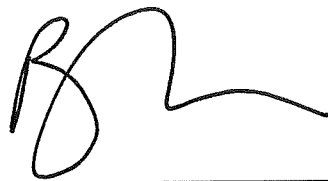
The need to identify MTBC in a rapid manner requires the use of the BacTec MGIT 960. The instrument is widely used across the United States because of its accuracy and ease of use. Becton, Dickenson and Company is the only vendor that provides approved maintenance of the BacTec MGIT 960 as well as the approved consumables.

7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):

By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.



Printed Name:

Dan Mann

Date:

11/12/19