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NEW

State of Maine



Master Agreement

Effective Date: 07/19/23

Expiration Date: 07/18/26

Master Agreement Description: BACTEC Rental and Consumables

Buyer Information

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

Issuer Information

Christine Violette 207-441-7282 ext. christine.violette@maine.gov

Requestor Information

Shawn Belanger 207-287-5073 ext. shawn.belanger@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: 93862

Commodity Description: BACTEC Rental and Consumables

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	07/19/23	07/18/26
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Please see authorized signatures displayed on the next page

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 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

The purpose of this master agreement is to order equipment, as well as consumables, accessories, and software on an as-needed basis. Department of Health and Human Services may submit delivery orders including the agreed upon prices and discounts until the expiration date of the master agreement. All delivery orders and formal price quotations will be subject to the terms, conditions, discounts, and pricing attached and hereby incorporated into this master agreement. This master agreement is for a term of 36 months.

**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) 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. 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. 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. 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 State may, at its discretion, excuse the performance of an obligation by a party under this Agreement 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, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State may, at its discretion, extend the time period for performance of the obligation 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 or 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: The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreement, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. 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 specified herein, 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, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

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 Division 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.

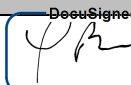
21. INTEGRATION: All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

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 Bell	Title: Sr Mgr Commercial Contracting
DocuSigned by:	
Authorized Signature:  <small>745D11E231FC4F2...</small>	Date: 7/6/2023



BD ACQUISITION AGREEMENT

BD Agreement Number: PACFD28668_4/10/2023_PLM

Date: June 6, 2023

This BD Acquisition Agreement ("Agreement") is by and between Maine Health & Environmental Testing Laboratory ("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);
- 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)
- **Price Protection:** 12 months
- **Payment Terms:** Net 30 days
- **Shipping option Equipment:** Direct
- **Shipping option Consumables:** Direct
- **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 Laboratory
 Address: 221 State St.
 Augusta, ME 04330

BD: Becton, Dickinson and Company, through its
 BD Life Sciences – Integrated Diagnostic Solutions business unit
 7 Loveton Circle
 Sparks, MD 21152
www.bd.com

Agreed to By: [Signature]
 Print Name: Director
 Print Title: Director DCU
 Date: 6/8/2023

DocuSigned by:
[Signature]
 745D11E231EC4E2
 Agreed to By: Julia Bell
 Print Name: Sr Mgr Commercial Contracting
 Print Title: 7/6/2023
 Date: _____




Exhibit A: Customer Pricing and Commitments

1. **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 BACTEC MGIT 960	221 State St. Augusta, ME 04330	445870	1	Reagent Rental - New to Ship	MG2940 to be replaced by new MGIT-960 (s/n to be determined at installation)

2. **Reserved.**

3. **Equipment Installation.** The Equipment Installation will be provided for newly purchased Equipment through BD Field Service Engineer

4. **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 Unit Commitment	Unit Pricing	Case/Kit Pricing
BBL MGIT 7mL Tube	245122	2,400	7,200	\$11.71	\$1,170.64
BACTEC MGIT Supplement Kit (100 tests)	245124	As needed	As needed	\$0.60	\$60.00
BACTEC MGIT 960 SIRE Kit (40 tests)	245123	As needed	As needed	\$2.56	\$101.70
BACTEC MGIT 960 PZA Medium (25 tubes)	245115	As needed	As needed	\$7.66	\$191.40
BACTEC MGIT 960 PZA Drug Kit (50 tests)	245128	As needed	As needed	\$1.61	\$80.60

Annual Unit Commitments will not be enforced as provided in Exhibit B, Section 1 (Consumable Purchase Shortfall) until after the ramp-up period (the "Ramp-Up Period") that is twelve months after the date the Equipment is installed ("Installation Date"). 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.

5. **Training.** The following training will be provided for newly purchased Equipment: Customer's Facility (1 - 3 days)

6. **Service.** Customer shall maintain a service plan ("Service Plan") for all Equipment listed in Section 1 (Equipment) during the Term. The Service Plan selected below, shall be provided to Customer at no additional cost during the Equipment Warranty Period.

Service Plan purchased under separate Service Agreement					
Equipment Description	Service Contract Exp.	Service Plan	Unit Qty.	Purchase Method	Contract Reference
BD BACTEC MGIT 960	11/15/2025	Comprehensive	1	Separate Service Agreement	PACFD-24383_MAINE HEALTH & ENVIRONMENTAL_TE

**This Service Plan that was in place for the old Equipment (s/n MG2940) will be transferred to the new Equipment upon expiration of the 12-mo Equipment Warranty Period.*

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.
BD Life Sciences – Integrated Diagnostic Solutions – Confidential
v. 2021-11-29_JCB



Exhibit B – Standard Terms and Conditions

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 plus Consumer Price Index (CPI) current rate to be applied to the then current price effective upon the next and each subsequent anniversary of the Effective Date. Consumer Price Index (CPI) will be calculated based on the data from the Federal Reserve Economic Data (FRED) St. Louis Federal Reserve. If data is not available during the annual adjustment, the current CPI rate shall remain firm until following subsequent anniversary, then Customer will be notified and billed with updated CPI rate. 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 complaint 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 CPI + 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 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.**


Exhibit B – Standard Terms and Conditions

- 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.**
- 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.
 - 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.
 - 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.



Exhibit B – Standard Terms and Conditions

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(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.

- 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

 **Exhibit B – Standard Terms and Conditions**

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.



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 5. (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 and HEPA filters), 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.** 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. From time to time, BD may issue Updates to its proprietary software at no charge. Updates to third party software are not provided by BD.
 - 4.7 **Software Upgrades.** 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 the Equipment can perform. Upgrades to third party software are not provided by BD.
 - 4.8 **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.
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.
 - 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-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.
- 5.11 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 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 days' notice by BD of its request for payment and intention to cease performing such services.
- 8. 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.
- 9. Operating Software Upgrades.** If Customer has purchased the Enhanced Service Plan BD will provide Operating System upgrades only at no additional cost and hardware is Customer's sole responsibility. If Customer has purchased the Elite Plan BD will provide Operating System and Hardware upgrades at no additional cost. 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.
- 10. 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 days of the date BD failed to meet the Service Response Time.
- 11. 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 Exhibit D - Service Plans
BD INTEGRATED DIAGNOSTIC SOLUTIONS SERVICE LEVELS

	Comprehensive	Enhanced²	Elite³
Phone Support 24 hours a day / 7 days a week	X	X	X
Priority Phone Support			X
After Hour Call Back expectation less than 4 hours	X		
After Hour Call Back expectation less than 2 hours		X	
After Hour Call Back expectation less than 1 hours			X
Contracted time of preventative maintenance M – F / 8A – 5P	X	X	
Contracted time of preventative maintenance M – Su / 8A – 5P			X
Contracted time of corrective maintenance M – F / 8A – 5P	X		
Contracted time of corrective maintenance M – Su / 8A – 5P		X	X
Field service emergency response time ≤ 48 hrs, 5 days/week	X		
Field service emergency response time ≤ 48 hrs, 7 days/week		X	
Field service emergency response time ≤ 24 hrs, 5 days/week			X
Up time guarantee 95%		X	
Up time guarantee 98%			X
Product support credit		1	2
Additional training/re-training List Price	X		
Additional training/re-training 25% off of List Price		X	
Additional training/re-training 40% off of List Price			X
LIS interface change support List Price	X		
LIS interface change support 25% off of List Price		X	
LIS interface change support 40% off of List Price			X
Software Updates	X	X	X
Operating Software Upgrades- Software Only		X	
Operating Software Upgrades- Hardware and Software			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 a one-time replacement 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 business days after Single Swap Option is used. Single Swap Service does not include Preventative Maintenance.

² This Service Plan Level is not available for the BD BACTEC FX40 or for the Viper XTR.

³ This Service Plan Level is not available for the BD BACTEC FX40 or for the Viper XTR.