

MODIFICATION

**State of Maine**



**Master Agreement**

**Effective Date:** 08/28/13

**Expiration Date:** 12/31/19

**Master Agreement Description:** 3 Year Contract Media & Supplies for BACTEC MGIT 960

**Buyer Information**

Todd Cummings 207-624-7357 ext. Todd.Cummings@maine.gov

**Issuer Information**

Donny Crockett 207-624-7336 ext. Donny.Crockett@maine.gov

**Requestor Information**

Lisa Robbins 207-287-2727 ext. lisa.robbins@maine.gov

**Authorized Departments**

10A DEPT OF HUMAN SERVICES

**Vendor Information**

**Vendor Line #:** 1

**Vendor ID**

VC1000007971

**Vendor Name**

BECTON, DICKINSON & COMPANY

**Alias/DBA**

**Vendor Address Information**

1 BECTON DR

FRANKLIN LAKES, NJ 07417

US

**Vendor Contact Information**

Customer Service

1-800-638-8663ext.

bd\_customer\_service@bd.com

**Commodity Information**

**Vendor Line #:** 1

**Vendor Name:** BECTON, DICKINSON & COMPANY

**Commodity Line #:** 1

**Commodity Code:** 49043

**Commodity Description:** 3 Year Contract Media & Supplies for BACTEC MGIT 960

**Commodity Specifications:** As per the specifications attached made part of this MA. 3 Year Contract for Media & Supplies for BACTEC MGIT 960 Rental fee paid through purchase of media.

**Commodity Extended Description:** 3 year extension with updated pricing, price protected for 2 years per email from Justin Santo attached

|                                  |  |                                      |
|----------------------------------|--|--------------------------------------|
| <b>Quantity</b><br>0.00000       | <b>UOM</b>                             | <b>Unit Price</b><br>\$0.00          |
| <b>Delivery Days</b>             | <b>Free on Board</b>                   |                                      |
| <b>Contract Amount</b><br>\$0.00 | <b>Service Start Date</b>              | <b>Service End Date</b>              |
| <b>Catalog Name</b><br>MGIT 960  | <b>Discount</b><br>0.0000 %            |                                      |
|                                  | <b>Discount Start Date</b><br>08/28/13 | <b>Discount End Date</b><br>12/31/19 |

**Commodity Information**

**Vendor Line #:** 1

**Vendor Name:** BECTON, DICKINSON & COMPANY

**Commodity Line #:** 2

**Commodity Code:** 96286

**Commodity Description:** Becton Dickinson Shipping Charges

**Commodity Specifications:** Shipping Charges for Becton Dickinson media & supplies

|                                  |                                       |                                     |
|----------------------------------|---------------------------------------|-------------------------------------|
| <b>Quantity</b><br>0.00000       | <b>UOM</b>                            | <b>Unit Price</b><br>\$0.00         |
| <b>Delivery Days</b>             | <b>Free on Board</b>                  |                                     |
| <b>Contract Amount</b><br>\$0.00 | <b>Service Start Date</b><br>12/29/16 | <b>Service End Date</b><br>12/31/19 |
| <b>Catalog Name</b>              | <b>Discount</b><br>0.0000 %           |                                     |
|                                  | <b>Discount Start Date</b>            | <b>Discount End Date</b>            |

| VENDOR CUSTOMER CODE | SUPPLIER PART NUMBER | SUPPLIER NAME    | COMMODITY CODE | ITEM DESCRIPTION           | EXTENDED DESCRIPTION | UNIT OF MEASURE | LIST PRICE | DELIVERY DAYS |
|----------------------|----------------------|------------------|----------------|----------------------------|----------------------|-----------------|------------|---------------|
| VC1000007971         | 245122               | Becton Dickinson | 49043          | BBL MGIT 7mL Tubes         | 100 tubes            | CART            | \$718.02   | 5             |
| VC1000007971         | 245124               | Becton Dickinson | 49043          | BACTEC MGIT Supplement Kit | 100 tests            | KIT             | \$65.60    | 5             |
| VC1000007971         | 445872               | Becton Dickinson | 49043          | QC Temperature Tube        | Temperature QC Tube  | EA              | \$99.23    | 5             |



**BD Diagnostic Systems Contract Pricing**

**Vendor Name:** BD Diagnostic Systems

**Contract Name:** B\_MGITRR\_MAINE HEALTH & ENVIRONMENTAL  
**BD Contract #:** 600006684

**Prior Contract ID:**

**Contact Name:** Donna Crandall  
**Contact Email:** [donna\\_crandall@bd.com](mailto:donna_crandall@bd.com)  
**Contact Phone:** 410-316-4386

**Valid From:** 9/1/2014  
**Valid To:** 12/31/2017

**Contract Action Reason:** Price Increase Notification

**Comments:**

| Agreement | Description of agreement              | External description | Contract Valid from | Contract Valid to | Material | Material Description                | UOM | Per | Rate   | Valid From | Valid To   |
|-----------|---------------------------------------|----------------------|---------------------|-------------------|----------|-------------------------------------|-----|-----|--------|------------|------------|
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 245115   | Tube Pza Medium 25 Pak Mgit 960     | SP  | 1   | 205.56 | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 245122   | Tube Bactec Mgit 7MI                | SP  | 1   | 738.89 | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 245123   | Kit Bactec Mgit 960 Sire            | EA  | 1   | 109.21 | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 245124   | Kit Bactec Mgit 960 Supplement 100  | EA  | 1   | 67.65  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 245125   | Kit Bactec 960 Streptomycin 4.0 Kit | EA  | 1   | 53.16  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 245126   | Kit Bactec 960 Isoniazid 0.4 Kit    | EA  | 1   | 52.89  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 245128   | Kit Drug Pza Mgit                   | EA  | 1   | 86.60  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445872   | Temp Qc Device Mgit Instrument      | EA  | 1   | 99.23  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445942   | Rack Ast Transport                  | EA  | 1   | 129.34 | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445943   | Set Ast Carrier 5 Tube              | EA  | 1   | 76.50  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445944   | Set Ast Carrier 4 Tube              | EA  | 1   | 76.50  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445945   | Set Ast Carrier 3 Tube              | EA  | 1   | 76.50  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445946   | Set Ast Carrier 2 Tube              | EA  | 1   | 76.50  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445959   | Set Ast Carrierspare Barcodes       | EA  | 1   | 12.92  | 1/1/2017   | 12/31/2017 |
| 600006684 | B_MGITRR_MAINE HEALTH & ENVIRONMENTAL | RENEWAL #600001923   | 9/1/2014            | 12/31/2017        | 445993   | Set Ast Carrier 8 Tube              | EA  | 1   | 76.50  | 1/1/2017   | 12/31/2017 |



# BD ACQUISITION AGREEMENT

Agreement Number: MH11162016JS

Date: 11/16/2016

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This agreement (“Agreement”) is by and between Maine Health & Environmental Testing (“Customer”) and BECTON, DICKINSON AND COMPANY, through its BD Diagnostics – 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 products 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) The attached Customer Pricing and Commitments (Exhibit A); and
- 2) The attached Standard Terms and Conditions (Exhibit B); and

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 products 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.

- Agreement Term: 36 months (commencing on the Effective Date)
- Price Protection: 24 months
- Payment Terms: Net 30 days
- Shipping option: Direct
- Warranty Period: NA
- Service: Time and Material
  
- BD offer Expiration Date (if not signed by both parties below): 02/20/2017

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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.

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

Becton, Dickinson and Company,  
through its BD Diagnostics - Diagnostic Systems business unit  
7 Loveton Circle  
Sparks, MD 21152  
[www.bd.com](http://www.bd.com)

**CUSTOMER**  
**Agreed To By:** \_\_\_\_\_

**BD**  
**Agreed To By:** \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_



# 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 Paragraph 3 of the Standard Terms and Conditions.

| QTY. | CAT. NO. | EQUIPMENT DESCRIPTION      | ACQUISITION METHOD |
|------|----------|----------------------------|--------------------|
| 1    | 445870   | Mgit 960 (serial # MG2940) | Rental             |

2. **Equipment Location.** The Equipment shall be located at the following address, and shall not be removed or relocated without BD's prior written consent:

**Maine Health & Environmental Testing**  
**221 State St**  
**Augusta, ME 04330**

3. **Consumable Purchase Requirements.** During the Term, Customer agrees to purchase the consumables (the "Consumables") listed below at monthly volumes equal to or exceeding the Monthly Target Amounts set forth below.

| Annual Quantity | Catalog Number | Item Description          | Annual Consumable Purchase Commitment | Monthly Target Amount | Case Price      |
|-----------------|----------------|---------------------------|---------------------------------------|-----------------------|-----------------|
| 30 cases        | 245122         | MGIT 7ml tubes (100)      | \$21,540.60                           | 2.5 cases             | <b>\$718.02</b> |
| As needed       | 245124         | MGIT Supplement Kit (100) |                                       |                       | <b>\$65.60</b>  |

Monthly Target Amounts will not be enforced as provided in Section 2 (Consumable Purchase Shortfall) below until after the date occurring twelve (12) months after the date of installation of the Equipment ("Installation Date") (the "Ramp-Up Period").

4. **Training. The following training will be provided for the Equipment**

Customer's Facility (1-3 Days)     BD's Facility - Fee \$\_\_\_\_\_     None (Refer to Equipment User's Manual and the Labeling)

5. **Service.** The following reflects Customer's chosen service plan, if any, and the annual price to be paid by Customer with respect thereto:

Service Plan  
Time and Material

6. **Any Additional Terms and Conditions.**

If at any time during the term of this Agreement, BD offers for sale a newer version of the Equipment or Software acquired under this Agreement that is appropriate for Customer, Customer will have the option to upgrade to the newer version.



## Exhibit B

# Standard Terms and Conditions

1. **Pricing.** Prices for Consumables will remain firm for a period of twenty-four (24) months after the Installation 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. BD assumes risk of loss until delivery to Customer. Title to Consumables passes upon delivery to Customer. 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 purchases will be monitored during the Term by BD. On a periodic basis after the Installation Date, BD will reconcile the actual purchases made by Customer to those committed to be purchased in Section 3 (Consumable Purchase Requirements) of Exhibit A. At any time after the end of the Ramp-Up Period, if Customer's Consumable purchases fail to average the Monthly Target Volume over a period of three or more months (the "Compliance Period"), BD may, in its discretion, (1) invoice Customer for the difference between the agreed minimum quantity of Consumables and the quantity of Consumables actually purchased, at the contract price then in effect; (2) revise the pricing applicable to the Consumables to reflect such lower volumes; or (3) extend the Term (and the annual purchase commitment) 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 2 (Consumable Purchase Shortfall).
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.** Except in the event of a cash sale to Customer, all Equipment will remain the property of BD, who shall hold exclusive title. 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. 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. Customer hereby authorizes BD, its agents or assigns, to sign and execute on its behalf any and all UCC forms to evidence BD's ownership interest in the Equipment.
6. **Service.** Only BD's designated service technicians 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. BD will perform service on the Equipment to keep it in operation in accordance with the Product Labeling (as defined below) for twelve (12) months after the Installation Date. Thereafter, Customer shall be responsible for charges for service activities assessed by BD on a time and material basis in accordance with rates then in effect at BD for such activities unless a Service Plan has been purchased by Customer as indicated in the Service Section in Exhibit A. 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. No other persons are authorized to perform service on the Equipment. Service shall be provided by appointment Monday through Friday from 8:30am to 5:00pm (excluding BD holidays) at Customer's facility.
7. **Maintenance and Risk of Loss.** Except in a cash sale, Customer agrees to maintain the Equipment in accordance with Equipment User's Manual and Labeling and other written materials. Customer shall bear all risk of loss and damage with respect to the Equipment for any cause from the Installation 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 it desires 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 title passes to Customer, as defined above in Section 5.
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 "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 the Warranty Period. 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 Service Agreement period are warranted against defects in material and workmanship until the expiration date of the term of the Service Agreement 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 Service Agreement. The warranties do not apply to Equipment and/or parts that have been misused or improperly maintained. (d) THE LIMITED CONSUMABLES, EQUIPMENT, 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. **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



## Exhibit B

### Standard Terms and Conditions

- 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).
- 11. 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.
- 12. Disclosure Requirements.** The value of any rebates, discounts or incentives provided to Customer may constitute a “discount or other reduction in price” under Section 1128B(b)(3)(A) of the Social Security Act [42 U.S.C. Sec. 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 of federal health care program the net cost actually paid by Customer.
- 13. 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 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). If BD terminates this Agreement under this Section due to a breach of the Agreement by Customer, 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.
- 14. Assignment.** Customer may not assign any of its rights or interest in this Agreement without the prior written consent of BD.
- 15. 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 15 (No Resale).
- 16. 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, Exhibits A and B) 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.
- 17. 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 or electronic scanned copy of this Agreement bearing authorized signatures may be treated as original.
- 18. Survival.** Except as expressly set forth in this Agreement, Customer’s payment obligations and Sections 10 (Indemnity), 11 (Limitation of Liability), 13 (Termination), 15 (No Resale), 16 (Contract Formation), 17 (General), and 18 (Survival) shall survive the expiration or termination of this Agreement.