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Contract Number

22-910

SAP Number

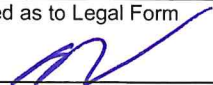

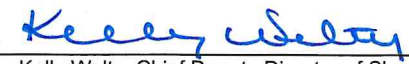
### Sheriff/Coroner/Public Administrator

<b>Department Contract Representative</b>	Kelly Welty, Chief Deputy Director of Sheriff's Administration
<b>Telephone Number</b>	(909) 387-0640
<b>Contractor</b>	CareFusion Solutions, LLC
<b>Contractor Representative</b>	Kara Clark
<b>Telephone Number</b>	(513) 307-5751
<b>Contract Term</b>	Five-year period from the first day of the month following the date of installation and acceptance
<b>Original Contract Amount</b>	\$68,000
<b>Amendment Amount</b>	N/A
<b>Total Contract Amount</b>	\$68,000
<b>Cost Center</b>	4421101000

**Briefly describe the general nature of the contract:**

BD Pyxis MedBank Standard Terms and Conditions, including non-standard terms, for maintenance and support services, which shall remain in effect for as long as the underlying Customer Order Agreement is in place, or unless terminated.

**FOR COUNTY USE ONLY**

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
 Richard D. Luczak, Deputy County Counsel		 Kelly Welty, Chief Deputy Director of Sheriff's Administration
Date <u>6/16/2022</u>	Date _____	Date <u>6/17/22</u>

# BD PYXIS™ MEDBANK – STANDARD TERMS AND CONDITIONS

The Quote(s) and, notwithstanding anything to the contrary on the Quote, these terms and conditions, govern your purchase of BD Pyxis™ MedBank equipment (the "**Equipment**"), software, and services, and form the entire agreement ("**Agreement**") between the customer identified in the Quote(s) ("**you**" or "**Customer**") and Becton, Dickinson and Company, on behalf of itself and its affiliates ("**we**" or "**BD**"), and is effective upon your acceptance of the Quote(s), which upon your acceptance, shall become your "Customer Order" or "Customer Orders". Any reference to a "Master Agreement" on the Quote, shall mean these terms and conditions for purpose of this Quote. Additional or conflicting terms (whether included in a purchase order or otherwise) do not amend or modify the Agreement. THE CUSTOMER ORDER IS NON-CANCELLABLE AND, EXCEPT AS OTHERWISE PROVIDED IN THE AGREEMENT, NON-REFUNDABLE.

1. **Products and Services.** The products ("**Products**"), software ("**Software**") and services ("**Services**") purchased under this Agreement, are detailed in the Customer Order and described in all applicable user guides, technical specifications, product security white papers that apply to the Products, Software and Services purchased under the Agreement (the "**Documentation**").
2. **Equipment Terms.** Title to the Equipment will remain with BD indefinitely in cases where the Customer Order calls for a lease or rental and until payment of the purchase price in cases where the Customer Order calls for a purchase. In the case of a lease or rental, you agree to maintain the Equipment in accordance with the Documentation and bear the risk (and expense) of loss and damage for any cause from delivery until the Equipment is returned to BD at the end of the lease or rental term.
3. **Pricing; Shipping; Payment Terms.** Each Customer Order includes prices, fees and other specific terms and conditions for the Equipment and Software (collectively, the "**Products**") and Services. Equipment that is shipped directly from BD will ship to the facility designated in each Customer Order, F.O.B. Origin, with freight charges and insurance being paid by BD and added to the invoice. Payment terms are Net 30 from the date of your receipt of the invoice, which invoices shall be sent no later than 30 days after the applicable Term Begin Date; fee-based credit cards are accepted if approved in advance by BD. You are responsible for all taxes and assessments levied against the Products, including, without limitation, withholding or value added taxes, and personal property taxes imposed on BD as the Equipment lessor; BD will not collect sales tax if you provide BD with written evidence of exemption.
4. **Software License Terms and Restrictions.** BD grants Customer a nonexclusive, nontransferable, limited license to use the Software and Documentation licensed solely in connection with Products purchased/rented under this Agreement and only in conjunction with your internal business purposes, provided that all licensing of third party software will be subject to the terms of any third party software terms included in the Documentation, and subject in all cases to payment of applicable fees. During the Agreement Term, you may access and use, and may permit Users to access and use, the Software in the ordinary course of your business at your "location" or "ship to facility" identified in the Customer Order, or as otherwise agreed to by the Parties (each such location, a "**Facility**"). "Users" shall mean those Customer employees, agents, consultants and similar personnel, or Customer's clients who Customer authorizes to use and access Software. Customer shall maintain responsibility for all obligations and ensuring compliance with the terms and conditions of this Agreement, including with respect to all Users. From time to time, BD may add, modify, discontinue, condition the use of, and otherwise change elements of Software, but will not materially lessen core features or functions. You shall not, and shall not permit any User to: (i) circumvent or bypass any technological protection measures in or relating to a Product; (ii) decompile, disassemble, decrypt, hack, emulate, exploit, or reverse engineer or otherwise attempt to obtain or perceive the source code of Software; (iii) modify or create any derivative work from Software or Documentation; (iv) copy, publish, display, perform, transfer, rent, sublicense, lease, sell, assign, pledge, encumber, export, import, distribute, or lend Software or Documentation; (v) enable access to Software by a third-party software application, except as expressly authorized by BD in writing; (vi) remove, alter or obscure any proprietary notice or legend from a Product or Documentation; (vii) permit use of a Product by any person not qualified or not authorized to do so; or (viii) use a Product in violation of any law or regulation.
5. **Data Security and Rights.**
  - a. During the Term BD will maintain a written information security program of policies, procedures and controls governing the processing, storage, transmission and security of Customer Data (the "**Security Program**"). The Security Program includes industry-standard practices designed to protect Customer Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. BD updates the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, although no such update will materially reduce the commitments, protections or overall level of service provided to Customer as described herein.
  - b. BD's information security policies shall be documented and communicated to personnel, contractors, and third parties with access to Customer Data, including appropriate ramifications for non-compliance, and are available at [https://cybersecurity.bd.com/?\\_ga=2.254414920.1133650491.1634222395-1074638392.1514910707](https://cybersecurity.bd.com/?_ga=2.254414920.1133650491.1634222395-1074638392.1514910707).
  - c. BD shall perform risk assessments with the objective to regularly test, assess and evaluate the effectiveness of the Security Program supporting the Software. BD shall have the risk program audited annually by an independent third-party in accordance with Section 5(d) below.
  - d. BD shall use commercially reasonable efforts to establish and maintain sufficient controls to meet certification and attestation for the objectives stated in ISO 27001, ISO 27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent standards) for the Security Program supporting the Software. Commencing on January 1, 2023, BD shall, at least once per calendar year, obtain an assessment against such standards and audit methodologies by an independent third-party auditor and, upon request make the executive reports available to the Customer.
  - e. Any data center facilities include (1) physical access restrictions and monitoring; and (2) fire detection and fire suppression systems both localized and throughout the data center floor. The systems, machines and devices include (1) physical protection mechanisms; and (2) entry controls to limit physical access.
  - f. BD shall use NIST 800-88 industry standard (or substantially equivalent) destruction of sensitive materials, including Customer Data, before such media leaves BD's data centers for disposition.
  - g. BD conducts regular security risk evaluations to identify critical information assets, assess threats to such assets, determine potential vulnerabilities, and provide for remediation. When software vulnerabilities are revealed and addressed by a vendor patch, BD will obtain the patch from the applicable vendor and apply it within an appropriate timeframe in accordance with BD's then-current vulnerability management and security patch management standard operating procedure and only after such patch is tested and determined to be safe for installation in all production systems.
  - h. BD updates antivirus, anti-malware, and anti-spyware software on regular intervals and centrally logs events for effectiveness of such software.
  - i. BD uses industry standard encryption to encrypt Customer Data in transit over public networks to the Software.
  - j. Software patches are regularly made available to Customers to address known vulnerabilities.
  - k. Software shall not contain viruses, malware, worms, date bombs, time bombs, shut-down devices, that may result in, either: (a) any inoperability of the Software; or (b) any interruption, interference with the operation of the Software (collectively, "**Illicit Code**"). If the Software is found to contain any Illicit Code that adversely affects the performance of the Software or causes a material security risk to Customer Data, BD shall, as Customer's exclusive remedy, use commercially reasonable efforts to remove the Illicit Code or to advise and assist Customer to remove such Illicit Code.
  - l. BD maintains a disaster recovery related plan for BD-hosted Products and Services that is consistent with industry standards for the Software.
  - m. BD monitors, analyzes, and responds to security incidents in a timely manner in accordance with BD's standard operating procedure. BD's security group will escalate and engage response teams as may be necessary to address a security incident. BD will report to Customer any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Data (a "**Breach**") without undue delay following determination by BD that a Breach has occurred. As information is collected or otherwise becomes available, BD shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow Customer to notify relevant parties, including affected individuals, government agencies, and data protection authorities in accordance with data protection laws. Customer will cooperate with BD by providing any information that is reasonably requested by BD to resolve any security incident, including any Breaches, identify its root cause(s), and prevent a recurrence. Customer is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted parties and for providing such notice.
  - n. This Section 5 does not apply to: (a) information shared with BD that is not Customer Data; (b) data in Customer's VPN or a third-party network; and (c) any data processed by Customer or its users in violation of the Agreement.
  - o. BD may access and use Customer Data: only to provide Products, Support, and Implementation Services; (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 Section 15. If Customer Data contains PHI, then BD will use such Data

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in conformance with the Privacy Rules.

6. **Service and Support.** Support and Services purchased under Customer Orders are provided in accordance with the descriptions and conditions in Schedule A. BD provides Support during the Term subject to Customer's payment of the applicable fees. Only BD's designated service technicians may service, perform maintenance that is not expressly required to be performed by Customer, or repair the Equipment. After termination or expiration of any Support plan Customer may purchase an extended service plan and, if Customer chooses not to purchase such plan, then Customer will be responsible for charges for Services on a time and material basis. Support is not assignable by Customer and shall not pass to the benefit of any eventual transferee of the Equipment from Customer. Customer shall cooperate with BD in providing Support, including by ensuring that the system requirements specified in the Documentation are satisfied, with such system requirements a condition of Implementation Services. If Customer at any time fails to pay any fees for either Service or Support, as applicable, and does not dispute the fees reasonably and in good faith, then, on not less than 30 days' notice, BD may cease providing such Service or Support for so long as the fees remain unpaid.
7. **Implementation Services.** Products will be implemented pursuant to the option set forth in the Customer Order. The Implementation Service options are described in Schedule A. Each Party shall use reasonable efforts to fulfill its responsibilities, conduct its activities, and provide its deliverables as specified in the implementation timeline. Customer shall reasonably cooperate with BD in its performance of Implementation Services, including providing any resources (including technology and physical environment) and with all necessary permits and free of obstructions, in each case as specified in the Documentation. Acceptance will be deemed to occur upon completion of the Implementation Services, and Customer will provide BD with written acknowledgment of Acceptance.
8. **Updates and Upgrades.** A charge may apply for Upgrades. Updates, Upgrades and any other revisions to third party software are not provided by BD. Customer must remain within the last two software versions to continue to receive Support. In the event Equipment is required to be upgraded to support the installation of Updates and Upgrades, the Customer shall be responsible for the purchase of such Equipment.
9. **Customer Responsibilities.** You shall (i) maintain virus and malware protection and operating system security updates to network connected computing systems which run Software and for backing up any information generated by the Equipment; (ii) maintain a safe work environment in connection with our provision of Service and/or Support; (iii) provide high-speed internet access and firewall modifications to enable connectivity for Support, if applicable, and (iv) not move or transfer Products from a Facility without providing BD with reasonable prior written notice of such move or transfer. Remote support service ("RSS") is required to provide support for security patches and assistance with cybersecurity incident response. If Customer chooses not to allow RSS to connect, security patch management and cybersecurity incident response will be the sole responsibility of Customer. RSS for requests received outside of working hours in the continental United States may be provided from locations outside of the United States, including Malaysia and Canada. Notwithstanding the foregoing, the Data Security protections set forth in Section 5 shall apply to such support.
10. **Term; Termination; Effect of Termination.** The Agreement will remain in effect until terminated and will remain in effect thereafter with respect to any Customer Order entered into prior to the effective date of termination. If a Customer Order does not include an expiration date, the Customer Order shall terminate concurrently with and on the terms set forth in the Agreement; Customer Orders that include an expiration date shall automatically renew for an additional 1 year term, and shall be subject to all applicable charges, unless Customer notifies BD in writing, at least 60 days prior to the expiration of the then current term that it does not wish to extend the term. Either party may immediately terminate any Customer Order and 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. Either party may terminate any Customer Order if the other party materially breaches such Customer Order and, except with respect to a payment breach, fails to cure such breach within 30 days after notice of the breach. The termination or expiration of the Agreement shall not terminate any Customer Order between BD and Customer, and any such Customer Order shall survive the expiration or termination of the Agreement, according to its terms and shall be subject to the applicable terms and conditions of the Agreement for the term of such Customer Order. Termination of the Agreement or any Customer Order will not release a party from any liability that exists at the time of termination or that accrues thereafter with respect to any act or omission before termination. If previously-installed Pyxis™ products are being upgraded or subject to new terms and conditions under this Quote, then the previously-applicable terms and conditions, including payment terms, for those products shall remain in full force and effect until the Term Begin Date of this Quote, unless otherwise agreed to in writing by the Parties.
11. **Limited Warranty; Exclusions.** BD represents and warrants that the Products will meet the specifications stated in the Documentation in all respects, shall be free from defects in material and workmanship for either the warranty period or expiration date stated in the Documentation for such Products, or for Products without a stated warranty period or expiration date, 90 days (the "**Warranty Period**"). Services and Support will be performed in a professional manner in accordance with generally accepted industry standards. Customer's sole and exclusive remedy for any breach of this warranty shall be (i) repair or replacement of the non-conforming Products, (ii) a refund of the amount paid to BD for non-conforming Products, or (iii) correct any service not performed in accordance with the warranty, with such remedy to be at BD's option. Customer must provide written notice of any such non-conformance to BD within the Warranty Period. Any alteration, abuse, misuse, further manufacture, packaging, processing, adjustment or repair by any person or entity other than BD or a person or entity authorized in writing by BD shall void any Products warranty. THIS LIMITED WARRANTY IS THE ONLY WARRANTY PROVIDED BY BD AND IS IN LIEU OF ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, INTEROPERABILITY, QUALITY OR CONDITION, ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS, WHETHER LATENT OR PATENT. NEITHER BD NOR ANY EMPLOYEE OF BD IS ENGAGED IN THE PRACTICE OF MEDICINE. CUSTOMER IS RESPONSIBLE FOR VERIFYING THE ACCURACY, COMPLETENESS, AND PERTINENCE OF ANY PHARMACOLOGICAL, MEDICAL, PATIENT, LEGAL OR OTHER RESULTS, DATA OR INFORMATION ENTERED IN, RECEIVED BY, PROCESSED BY, STORED IN, TRANSMITTED BY, PRODUCED BY, DISPLAYED BY, OR USED IN CONNECTION WITH THE PRODUCTS. CUSTOMER ASSUMES ALL RISKS AND LIABILITIES ASSOCIATED WITH THE USE OF SUCH INFORMATION, WHETHER SUCH INFORMATION IS USED ALONE OR IN COMBINATION WITH OTHER INFORMATION.
12. **Exclusions.** Any warranties provided hereunder will not apply to failure of any Products caused by (i) Customer's abuse, neglect or misuse of the Product or failure to maintain the Product in accordance with its Documentation (ii) implementation, repair, modification, alteration, adjustment, or relocation of the Product other than as expressly authorized by BD; (iii) malicious software not introduced by BD; or (vi) Customer's failure to permit installation of an Update, or otherwise comply with Customer Responsibilities set forth in Section 9.
13. **Confidentiality; IP.**
  - a. **General.** 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 13(b) 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.
  - b. **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.
  - c. **Rights upon Termination.** Upon termination of the Agreement or termination or expiration of a Customer Order, each party shall (i) immediately discontinue all use of the other party's Confidential Information; (ii) use reasonable efforts to promptly purge the other party's Confidential Information from its computer storage or other media, including online and off-line libraries (however, to the extent it is not feasible for the party to purge such Confidential Information from back-up storage, the party shall retain it in accordance with Section 13; and (iii) upon the request of the other party, certify in writing that it has complied with the terms of this section.
  - d. **IP Rights.** BD owns or has rights to all Intellectual Property embodied or embedded in, or practiced by, the Products, Documentation, or BD Data, 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. If Customer provides feedback on Products or ideas for new products, BD may use and commercialize such feedback and ideas in any way and for any purpose.

# BD PYXIS™ MEDBANK – STANDARD TERMS AND CONDITIONS

safeguards to protect Electronic PHI; and (ii) comply with any applicable requirement of the applicable HIPAA Rules.

- n. Conformance with Modification of HIPAA Rules or Regulations. If an amendment to or modification of HIPAA Rules, requires modification of this Section to permit Customer or BD to remain in compliance during the term of this Agreement, then BD and Customer shall enter into good faith negotiations to amend this Section to conform to any change required by such amendment or modification. Notwithstanding the foregoing, if Customer and BD have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulation and for Customer and BD to be and remain in compliance with all applicable laws and regulations.
- o. Survival. The obligations of BD pursuant to this Section shall survive the termination, cancellation or expiration of the Agreement.

**16. Certain Defined Terms.**

- a. **"Acceptance"** means the completion of Implementation Services or, if no Implementation Services are provided, the delivery of the Products or, as applicable, the protocols, keys or access codes needed to access and use the Products.
- b. **"BD Data"** means data that is part of a Product or Service and data derived from that data, and includes event data, operational data, device health data, database structure, and machine metrics of or relating to a Product or Service.
- c. **"Confidential Information"** means any confidential or proprietary information of a Party, however disclosed or recorded that is disclosed in connection with the Customer Order (including, with respect to Customer, Customer Data, and, with respect to BD, BD Data).
- d. **"Customer Data"** means data that is created by Customer, or as between Customer and BD, originates with Customer and is stored, transmitted to, or accessed by BD through a Product, as applicable. For avoidance of doubt, Customer Data includes PHI and personally identifiable information of any member of Customer's workforce and excludes BD Data.
- e. **"Term"** means the period of time specified in a Customer Order during which Customer is entitled to access and use a Product.
- f. **"Implementation Services"** means the professional services and training provided by BD to assist Customer in the implementation of a Product.
- a. **"IP"** means all (a) processes, methodologies, procedures and trade secrets, algorithms, apparatus, circuit designs and assemblies, scripts, databases, data collections, data models, designs, diagrams, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, methods, models, network configurations and architectures, protocols, schematics, specifications, subroutines, techniques, tools, uniform resource identifiers, user interfaces, web sites and domain names, (b) trademark, service mark, logos, or trade dress, (c) Software, tools and machine-readable texts and files, and (d) copyrights, literary work or other work of authorship, including documentation, reports, manuals, training materials, artwork, drawings, fonts, photographs, charts and graphics.
- b. **"PHI"** means "protected health information" as defined in 45 CFR §160.103, of any patient of Customer.


- c. **"HIPAA Rules"** means Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).
- d. **"Update"** means software to update, patch, fix, enhance or otherwise modify an already existing feature for the purposes of maintaining current functionality of the Equipment or Software that is a less substantial change than an Upgrade, as designated by BD in its sole discretion and made generally available to its customers.
- e. **"Upgrade"** means any new functionality to either Software or Equipment that does not exist in the current configuration and which requires additional payment by the Customer. "Functionality" is defined as a combined set of features that each BD product can perform that is a more substantial change than an Update, as designated by BD in its sole discretion and made generally available to its customers.
- f. **"Term Begin Date"** means the first day of the month following Acceptance, or a date otherwise mutually agreed upon by the parties in writing.

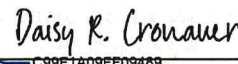
**17. Miscellaneous.**

- a. Each party hereby represents that it shall comply with applicable laws.
- b. All claims, controversies or disputes arising out of or relating to the Agreement or a Customer Order, the relationship of the parties and/or the interpretation and enforcement of their respective rights and obligations herein, shall be governed by the laws of the State of Delaware, except for any choice or conflict of law principles.
- c. Either Party may assign, sell, or otherwise transfer the Agreement without the prior consent of the other party (a) to an Affiliate or (b) in connection with a sale or transfer of all or substantially all of the assets of such party related to the subject matter described therein.
- d. Either party's failure to insist upon performance of any provision of the Agreement is not a waiver of any of its rights under the Agreement. No waiver under the Agreement will be valid or binding unless set forth in a writing signed by the party against which enforcement of the waiver is sought. The waiver will constitute a waiver only with respect to the specific matter described in the waiver and will not impair the rights of the party granting the waiver in any other respect or at any other time. No delay or forbearance by either party in exercising any right under the Agreement will be deemed a waiver of that right.
- e. If any provision of the Agreement should for any reason be held invalid, unenforceable or contrary to public policy, the remainder of the Agreement shall remain in full force and effect.
- f. The Agreement together with any Customer Orders (i) are the entire agreement between the parties and supersedes any other oral or written communications, advertisements or understandings with respect to the subject matter hereunder
- g. No amendment of the Agreement will be valid unless such amendment is made in writing and is signed by authorized representatives of BD and the applicable Customer.
- h. Nothing in the Agreement may be construed to place the parties in the relationship of partners, joint ventures, principal and agent, or employer and employee. Neither party may assume, create, or incur any liability or obligation in the name of or on behalf of the other party by virtue of this Agreement. Each party shall bear the costs of performance of its obligations under the Agreement.
- i. The Parties agree that there are no third-party beneficiaries of the Agreement, except Customer's affiliates to the extent they execute a Customer Order.

Each person signing below represents that he/she intends to, has the authority to, and hereby binds his/her respective party to this Agreement and any Quote/Customer Order attached.

**WEST VALLEY DETENTION CENTER**  
#10168392

Customer By:   
Customer Print: Curt Hagman Dawn M. Rowe  
Customer Title: Chairman Board of VCE crew Supervisors  
Date: JUN 28 2022

BD DocuSigned by:  
BD By:   
BD Print: Daisy R. Cronauer  
BD Title: Contract Analyst  
Effective Date: 17-Jun-2022

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

# BD PYXIS™ MEDBANK – STANDARD TERMS AND CONDITIONS

## 14. Indemnification; Limit of Liability.

- a. **General.** BD 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 BD's negligence or willful misconduct or breach of its representations, warranties and covenants under this Agreement; provided, however, that such obligation shall not apply to Claims arising from the negligence or willful misconduct of any healthcare professional in performing services in a healthcare facility owned or operated by Customer. Customer shall give prompt notice of the Claim to BD; however, any delay in giving notice will not excuse BD's obligations under this section, except to the extent Customer has been prejudiced by the delay. Customer shall cooperate with BD in the defense of the Claim and in any settlement of the Claim.
- b. **Infringement.** BD shall defend Customer against any Claim that BD's manufacture or sale of a Product 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 Product to make it non-infringing, or substitute functionally equivalent hardware or software; or (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) refund the purchase price of the Product in question. BD will have no obligation or liability to the extent the Infringement Claim arises from: (i) the combination or use of the Product with products, services, hardware, software, technology, data or other materials not furnished or approved by BD; (ii) modification of the Product, except as expressly authorized by BD in writing; or (iii) use of the Product other than in accordance with the Documentation, in violation of the Customer Order or applicable laws, or after notice from BD that Customer should cease use of the Product. 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.
- c. **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) REPROCUREMENT COSTS, LOSS OF PROFITS, INCOME, BUSINESS, USE, DATA OR GOODWILL.** Other than with respect to payment claims, and subject to the exceptions in 14(d) below, 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 12 month period immediately preceding the event giving rise to such liability.
- d. The exclusions set forth in 14(c) will apply to the fullest extent permitted by applicable laws, but will not apply to any liability arising from: (i) indemnification obligations hereunder related to death or bodily injury; (ii) a Party's fraud, gross negligence or willful misconduct; and (iii) breaches of confidentiality obligations. Notwithstanding the foregoing, the total aggregate liability of BD for claims arising out of BD's failure to comply with its obligations of confidentiality and data security under this Agreement (other than with respect to claims arising from BD's gross negligence or willful misconduct, for which BD's liability will be uncapped), shall be limited to \$200,000.

## 15. Business Associate Terms.

- a. **Permitted Uses and Disclosures by Business Associate.** In the performance of its obligations under this Agreement BD will receive PHI from or on behalf of Customer. BD shall not use or further disclose PHI except:
- (i) Business associate may use or disclose protected health information as necessary to perform the services set forth in this Agreement; or
  - (ii) Business associate may Use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached; or
  - (iii) Business Associate may use or disclose PHI as otherwise expressly permitted in writing by Covered Entity; or
  - (iv) Solely to the extent permitted by 45 C.F.R. §164.514, Business Associate shall de-identify PHI and use such de-identified PHI only as permitted by law and in a manner that would not violate the HIPAA Rules and this Agreement; or

- (v) If BD provides data aggregation services to Customer, BD may use PHI to provide Data Aggregation services to Customer as permitted by the HIPAA Rules.
- b. **Minimum Necessary.** In conducting functions and/or activities under the Agreement that involve the use and/or disclosure of PHI, BD shall make reasonable efforts to limit the use and/or disclosure of PHI to the minimum amount of information necessary to accomplish the intended purpose of the use or disclosure.
- c. **Protection of PHI.** BD shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement.
- d. **Reporting.** BD shall promptly and without undue delay report to Customer any Breach, Security Incident, or improper Use or Disclosure of PHI as required by the HIPAA Rules and applicable State law. Notwithstanding the foregoing, no report shall be required for unsuccessful attempts at unauthorized Access, Use, Disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system, which shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to Business Associate's information systems, unless such incident appears to be an attempt to obtain unauthorized access, use or disclosure of Covered Entity's electronic PHI.
- e. **Mitigation.** BD shall mitigate, to the extent practicable, any harmful effect that is known to BD of a use or disclosure of PHI by BD in violation of this Agreement.
- f. **Subcontractors and Agents.** BD agrees to ensure that any subcontractors and agents to whom it provides PHI received from, or created, or received by, BD on behalf of Customer agree in writing to the same restrictions and conditions set forth in the business associate provisions of the HIPAA Rules that apply through this Agreement to BD with respect to such information in accordance with such rules.
- g. **Accounting to HHS.** BD shall make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services (the "**Secretary**"), in a time and manner designated by Customer or the Secretary, for the purpose of the Secretary determining Customer's compliance with the HIPAA Rules.
- h. **Documentation of Disclosures.** BD shall document and maintain documentation of such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA Rules.
- i. **Accounting of Disclosures.** If BD receives a request from an individual pursuant to the HIPAA Rules for an accounting of Customer's disclosures of the individual's PHI and, in the course of attempting to satisfy the individual's request, Customer provides a written request to BD, then Business Associate shall promptly provide Customer the information required to be included in an accounting pursuant to applicable HIPAA Rules for BD's disclosures of PHI that are subject to an accounting pursuant to HIPAA Rules.
- j. **Access and Designated Record Set.** To the extent BD maintains PHI in a "Designated Record Set," as that term is defined in the HIPAA Rules, BD agrees to provide access, at the request of Customer, and in a reasonable time and manner, to PHI in a Designated Record Set to Customer in order for Customer to meet the requirements under the HIPAA Rules. If applicable, BD agrees to make any amendment(s) to PHI in a Designated Record Set that Customer directs or agrees to pursuant to HIPAA Rules at the request of Customer and in a reasonable time and manner.
- k. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations(s) under the HIPAA Rules, it will comply with the requirements that apply to the Covered Entity in the performance of such obligation(s).
- l. **Return or Destruction of PHI.** Upon termination of this Agreement for any reason, BD shall either return or destroy, if feasible, all PHI received from Customer, or created, maintained or received by BD on behalf of Customer. This provision shall apply to all such PHI in the possession of subcontractors or agents of BD. BD shall retain no copies of the PHI. If BD determines that returning or destroying the PHI is infeasible, then BD shall provide to Customer notification of the conditions that make return or destruction infeasible. BD shall extend the protections of this Section to such PHI and limit further uses and disclosures of such PHI to those purposes that makes the return or destruction infeasible, for so long as BD maintains the PHI.
- m. **Electronic PHI Safeguards.** To the extent BD creates, receives, maintains or transmits Electronic PHI on behalf of Customer, BD shall comply with the applicable HIPAA Rules and shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, in accordance with the applicable HIPAA Rules, and ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits Electronic PHI on BD's behalf will (i) implement reasonable and appropriate

# BD PYXIS™ MEDBANK – STANDARD TERMS AND CONDITIONS

## SCHEDULE A – SMS AND IMPLEMENTATION SERVICES DESCRIPTION

### 1. Support and Maintenance Service Description.

- a. Proper Performance and Updates. To the extent you have purchased Support and Maintenance Services ("SMS") in a Customer Order we will provide, during the purchased support term, (i) SMS that is required to keep the Product functioning substantially in accordance with the user, specifications or product guides provided in the Documentation "Proper Performance", and (ii) Updates. Upon release we will coordinate delivery of the Update (via the Internet) and assist you with installation, using reasonable efforts to minimize disruption to your use of MedBank Software. Updates will be provided with scripts and programs that install complete, working versions of the applicable Updates.
- b. Customer Support. Customer Support is available by phone at 1.866.930.9251 24/7/365 and may also be requested online at MedbankSupport@BD.com, via the support chat feature on its myQlink.net website.
- c. Exclusions. SMS is not provided if: (i) you are not in compliance with your obligations under the Agreement; (ii) use, operation, repair or maintenance of the MedBank Products are not in compliance with the manufacturer's terms and conditions of use in the Documentation; (iii) a MedBank Product is being used in combination with any item with which such MedBank Product is not intended to be operated or used, (iv) a MedBank Product has been subject to abnormal physical or electrical stress; (v) the MedBank Product has been modified or altered other than by CareFusion or as permitted by CareFusion in writing, (vi) the performance issue is caused by your act, omission, negligence, Loss or damage in relation to a MedBank Product, (vii) you fail to follow the recommended operating environment for the MedBank Product, (viii) the problem is with third party software or hardware not licensed through or sold by BD, (ix) you have not installed and implemented all released Updates; or (x) you moved or relocated the MedBank Product or assigned any right or interest in the MedBank Product without our advance written consent. Any service not specifically identified herein as a component of SMS may be provided by us upon or provision of an estimate and your issuance of a PO.
- d. Subcontractor. All or a portion of SMS may be provided by subcontractors, provided that we shall remain obligated to the terms herein to ensure quality performance of Support Services in accordance with the terms herein.

### 2. Implementation Services Description.

- a. Implementation Services. If purchased in a Customer Order, we will provide implementation services in accordance with our standard service offerings and implementation timeline for the type of purchased services, "Concierge" or "Guided", and Acceptance will be deemed to occur upon completion of services.
- b. Self-Install. Except for initial Customer Orders, you may elect to self-install under a subsequent Customer Order if you designate one or more employees (each, a "Customer Implementation Specialist") who satisfactorily completes "train the trainer" training provided by our personnel during implementation of MedBank Products under a prior Customer Order. If you elect to self-install in a Customer Order, then your Customer Implementation Specialist(s) shall be responsible for implementing installation of Products under such Customer Order.
- c. Per Diem Services. If you request any implementation-related or other services which are not included in the Quote/Customer Order, including: (i) on-site implementation services and troubleshooting; (ii) any additional implementation- or training-related services provided after Acceptance; or (iii) other services then CareFusion shall use best commercially reasonable efforts to provide the Per Diem Service under a separate agreement based on then-current per diem pricing applicable to all customers.

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LYNNA MONELLI BERNARDINO  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By \_\_\_\_\_

Deputy

