



BD ACQUISITION AGREEMENT

BD Agreement Number: PACFD33361_6/13/2023_SC

Date: May 2, 2024

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

- 1) Customer Pricing and Commitments (Exhibit A);
- 2) Standard Terms and Conditions (Exhibit B);
- 3) Warranty and Service Terms and Conditions (Exhibit C);
- 4) Service Plans (Exhibit D);
- 5) Software License and Support Terms and Conditions (Exhibit E);
- 6) Insurance Requirements (Exhibit F);
- 7) Onsite Service Provider Requirements (Exhibit G);
- 8) Campaign Contribution Disclosures (Exhibit H)

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"):** 60 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:** Distributor
- **Equipment Warranty Period:** 12 months (commencing on the Installation Date)
- **Service Plan Term:** 48 months (commencing after expiration of Equipment Warranty Period)
- **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.

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.

CUSTOMER: San Bernardino County on behalf of Arrowhead Regional Medical Center

Address: 400 N Pepper Ave.
Colton, CA 92324

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: _____
Print Name: Dawn Rowe
Print Title: Chair, Board of Supervisors
Date: _____

Agreed to By: Samuel Coulter
Print Name: Samuel Coulter
Print Title: Manager, Commercial Capital Contracting
Date: Jul 19, 2024



BD 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
BD BACTEC FX - Top Unit	400 N Pepper Ave. Colton, CA 92324	441385	3	Reagent Rental - New to Ship
BD BACTEC FX - Bottom Unit		441386	2	Reagent Rental - New to Ship
Synapsys NUC Computer		444878	1	Reagent Rental - New to Ship

2. **Equipment Software and Accessories.** The following Equipment Software and/or Accessories shall be provided with newly purchased/rented Equipment

Equipment Software and/or Accessories Description	SKU	Unit Qty.	Cost per Unit	Total Cost
BD BACTEC™ UPS	441549	3	Reagent Rental - New to Ship	
BD BACTEC Heavy Stand	441388	1	Reagent Rental - New to Ship	

Equipment Installation. The Equipment Installation will be provided for newly purchased/rented Equipment through BD Field Service Engineer

3. **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
Bactec Myco F Lytic 50 Ea	442288	As needed	As needed	\$ 7.59	\$ 379.60
Bottle Plastic Bactec Plus Anaer/F 50/Pk	442022	22,000	110,000	\$ 4.98	\$ 249.10
Bottle Plastic Bactec Plus Aerob/F 50/Pk	442023				
Bottle Plastic Bactec Peds Plus/F 50/Pk	442020	1,200	6,000	\$ 4.98	\$ 249.10
Bottle Plastic Bactec Lytic/10 Anaer/F	442021	22,000	110,000	\$ 4.40	\$ 219.95

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.

4. **Training.** The following training will be provided for newly purchased Equipment: Customer's Facility (1 - 3 days)
5. **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 Financed through the purchase of Consumables						
Equipment Description	Service Plan Term	Service Plan	Unit Qty.	Annual Cost Per Unit	Total Annual Cost	Total Term Cost
BD BACTEC FX - Top Unit	48 months (post-warranty)	Essential	3	The cost of the Service Plan is included with the price of the Consumables through the expiration of this Agreement.		
BD BACTEC FX - Bottom Unit	48 months (post-warranty)	Essential	2			
Synapsys NUC Computer	48 months (post-warranty)	Essential	1			

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.

6. **Software Licenses.** During the Term, Customer agrees to purchase the license fees for the software (the "Software") set forth below or as provided for in Exhibit E Schedule A:

BD Synapsys™ for BD BACTEC™	Catalog #	Qty	Price per unit	Total Annual Price	Total Term Price
BD Synapsys Laboratory Solutions	444150	1	The cost of the Software License is included with the price of the Consumables through the expiration of this Agreement.		
Connectivity & Workflow license	444157	3			
Advanced Analytics license	444156	1			

 **BD 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 compliant with Annual Unit Commitment compliance stated under Exhibit A.4. If BD determines that Customer has not met the twelve-month Annual Unit Commitment, BD may revoke price protection and increase prices to 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. 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 (except the acts or omissions of BD, its employees, and its agents) 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, unless such damage or destruction was caused by BD, its employees, or agents.
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 thirty days of the occurrence of the non-conformity if such non-conformance can be determined based on a reasonable visual inspection without opening the packaging. 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/rented 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 the 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.**

- 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/rented under this Agreement and only in conjunction with Customer's internal business use of the Equipment purchased/rented 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 except for Customer's contracted physicians and contracted staff ("**Customer's Contracted Users**") in the performance of services for this Agreement at Customer's facility, in which case, such Customer's Contracted Users shall abide by the terms of this Agreement; 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 set forth on Schedule 1, attached hereto.
- 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.** BD shall defend, indemnify, and hold harmless the Customer for any loss, damages, or liability, including reasonable attorneys' fees, resulting from any third party claim ("**Claim**") to the extent arising from the (a) negligence or willful misconduct of BD, its employees, or its agents, (b) any defect in the Equipment or Products or labeling of such Equipment or Products provided under this Agreement, and (c) breach of BD's 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. 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 BD has been materially prejudiced by the delay. Customer shall cooperate with BD in the defense of the Claim and in any settlement of the Claim; however, Customer may employ separate counsel, at its expense, to provide or participate in the defense, and BD may not settle a Claim unless the settlement completely and forever releases the indemnified Party from all liability with respect to the Claim.
- b. **Infringement Indemnification.**
1. **BD Obligations.** Notwithstanding the general indemnification section, and subject to the exceptions noted below, BD shall defend Customer against any Claim that BD's manufacture or sale of Equipment or Products infringes any patent or copyright or any other intellectual property rights 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, without incurring a material diminution in performance or function; or (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) refund the purchase price of the Products or Equipment in question and releasing the Customer of any further commitment under this Agreement.
2. **Exceptions.** BD will have no obligation or liability to the extent the Infringement Claim arises from: (i) the combination or use of the Products with products, services, hardware, software, technology, data or other materials not furnished or approved by BD to the extent that the combination or use of the Products in conjunction proximately caused the Infringement Claim; (ii) modification of the Products, except as expressly authorized by BD in writing, and only to the extent that such modification directly caused the Infringement Claim; 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 written notice from BD that Customer should cease use of the Products or Equipment.
3. **Sole Remedy.** The obligations set forth in this section will constitute BD's entire liability and Customer's sole remedy for any actual or alleged Infringement Claim.
- 13. Limitation of Liability.**
- a. **Excluded Liabilities.** NO PARTY WILL BE LIABLE TO THE OTHER PARTY FOR: (I) ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) ANY DAMAGES FOR BUSINESS INTERRUPTION; OR (III) RE-PROCUREMENT COSTS, LOSS OF PROFITS, INCOME, BUSINESS, USE, DATA OR GOODWILL.
- b. **Liability Limitation.** Excluding claims for the total fees due under a Customer Order and except for claims based on indemnification, gross negligence, violations of law, and willful misconduct, 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 2 times the amount of all fees paid and to be paid by Customer under the Agreement to which the matter relates during the twelve-month period immediately preceding the event giving rise to such liability.
- 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 a Business Associate Agreement ("**BAA**"), as applicable. BD shall not request or obtain any PHI from Customer without first entering into a BAA duly executed by both parties. 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

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.**

1. Definitions.

- 1.1 "**Confidential Information**" means any confidential or proprietary information of a party, however disclosed or recorded that is disclosed in connection with this Agreement (including, with respect to Customer, Customer Data, and, with respect to BD, BD Data) that is marked as "Confidential" by the disclosing party when disclosing such information to the receiving party.
- 1.2 "**BD Data**" means any data relating to or arising from the business operations or plans, services and products of BD or the performance or use of the Products or that may aid BD in optimizing resources and support; may be used to improve products or services, may be used in research and development regarding products or services; may be used in verification of security and data integrity of products or services or in resource planning, industry trends, benchmarking, or contract administration (e.g., data used for sales compensation), and any personal data that is aggregated and not identified or identifiable to any individual.
- 1.3 "**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.

2. 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. The parties' 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. BD understands that Customer is a public entity subject to, among other laws, decisions, rules and statutes, the Ralph M. Brown Act, the California Public Records Act, and the Sunshine Ordinance in its County Code and BD understands that Customer will make this Agreement public as part of its approval process with the San Bernardino County Board of Supervisors as required by law.
- 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. BD, to the extent that the information is needed by Customer to comply with applicable law, shall provide to Customer all information reasonably requested by Customer relating to such "discounts or other reduction in price" to enable Customer to comply with its reporting obligations.

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 and if the party is not legally prohibited from doing business with the assignee.

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

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

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. This Agreement is governed by and interpreted under the laws of the State of California. All actions arising hereunder shall be venued in the federal or state courts of California. 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, and any notices to the Customer shall be made to the attention of the "Hospital Director". 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". An electronic or scanned copy of this Agreement bearing authorized signatures may be treated as original. 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. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party, except that this shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable as an indemnification obligation.
- 23. Insurance.** BD will comply with the insurance requirements set forth on Exhibit F.
- 24. Debarment and Suspension.** Each Party represents and warrants to the other that it, its affiliates and their respective employees working on their behalf under this Agreement (i) are not currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "Federal Healthcare Programs") or any state healthcare program; and (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services and have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare program. These representations and warranties shall be ongoing during the term of this Agreement, and each party shall promptly notify the other party of any change in the status of the representations and warranties set forth in this Section. Any breach of this section shall give the notified party the right to terminate this Agreement immediately. Such termination right shall be the sole remedy of the notified Party in connection with any such breach.
- 25. 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 without any further obligations (including the purchasing commitment) under the Agreement, other than those incurred prior to the termination date.
- 26. 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. If such event, Customer may terminate this Agreement without incurring any liability for not meeting the purchasing obligations or commitment under this Agreement other than those obligations and/or commitments incurred prior to the date the Defense Production Act was invoked.
- 27. 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 or expiration of this Agreement.
- 28. 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.
- 29. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
- 30. Onsite Service Provider Requirements.** While performing services under this Agreement on Customer's premises, to the extent not inconsistent with BD's policies and procedures, BD, its employees, and agents shall comply with the Onsite Service Provider Requirements set forth on Exhibit G.
- 31. Campaign Contribution Disclosures (SB1439).** BD has disclosed to Customer using Exhibit H - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County ("County") Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the 12 months before the date this Agreement was approved by the County Board of Supervisors. BD acknowledges that under Government Code section 84308, BD is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Agreement. In the event of a proposed amendment to this Agreement, the BD will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of the BD or by a parent, subsidiary or otherwise related business entity of BD.

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

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

1. **Service Plan.** Service Plans are available for post Warranty service coverage and, except as provided for herein, are not assignable by Customer and shall not pass to the benefit of any eventual transferee of the Equipment from Customer.
2. **Service.** Service shall be provided as indicated in Exhibit A, Section 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 adequate 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. Subject to all applicable laws, 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 of Customer.
- 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 Service 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. Reserved.**
- 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 INTEGRATED DIAGNOSTIC SOLUTIONS SERVICE LEVELS

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

PREVENTATIVE MAINTENANCE

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

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

This Software License and Support Agreement (“Agreement”) is made and entered into as of the Effective Date of this BD Acquisition Agreement (“Effective Date”) by and between Becton, Dickinson and Company, a corporation established pursuant to the laws of the State of New Jersey, with offices at 1 Becton Drive, Franklin Lakes, New Jersey 07417 (“BD”) and San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California, on behalf of Arrowhead Regional Medical Center (“Customer”). Customer wishes to obtain a license to the BD Synapsys™ Microbiology Informatics Solution (hereinafter “Synapsys”) and engage BD to provide services related thereto, and BD has agreed to grant such license and provide such services, pursuant to the terms of this Software License and Support Agreement together with BD Acquisition Agreement Exhibit B (Standard Terms and Conditions). In consideration of the mutual promises set forth herein, Customer and BD agree as follows:

1. SCOPE OF THE AGREEMENT.

Statements of Work. BD may license Software or provide Services to Customer in accordance with the terms and conditions hereof, as further specified in one or more statements of work that BD and Customer may enter into from time to time pursuant to this Agreement and incorporated herein by reference (each a “Statement of Work” or “SOW”). In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of a Statement of Work, the terms and conditions of such Statement of Work shall control.

Grant of License. Subject to the terms and conditions of this Agreement and in consideration for the License Fees, as defined in Schedule A, BD grants to Customer a non-transferable (except as permitted by Section 13.f), non-exclusive, and non-sublicensable license (“License”) to use the Software during the Term as defined in Schedule A Section 3 (Term) solely for Customer’s own internal business purposes at Customer’s location(s) and in conjunction with the BD equipment (the “BD Equipment”), as set forth in Schedule A Section 1 (BD Equipment), provided that all licensing of Third Party Software will be subject to the terms of the Third Party Software Schedule. Additional schedules can be added to Schedule A under this Agreement (numbered Schedule A-1, A-2, A-3, etc.) as additional licenses associated with new BD Equipment are added to this Agreement. “BD Software” means BD-owned software (e.g., application software, embedded and/or integrated software, interface software, custom drivers) including the Synapsys software modules described in a Statement of Work, and all Updates, Upgrades (to the extent provided under this Agreement) and Documentation distributed to Customer (including all tools, utilities, algorithms, ideas and concepts embodied therein) and any related information disclosed by BD to Customer and any portion thereof in any form. “Third Party Software” shall have the meaning set forth in the Third-Party Software Schedule D. “Software” means BD Software and any Third Party Software. “Documentation” means the user manuals or other documentation relating to the Software provided or made available by BD, as may be updated by BD from time to time. For the avoidance of doubt, Customer can exercise its License rights through its employees who require use of the Software in their ordinary course of business, which does not include any services relating to evaluating, comparing or benchmarking the Software to any competing product (“Authorized Users”); provided, that Customer will be responsible for each such Authorized User’s use of the Software and compliance with the terms of this Agreement.

Use Restrictions. Customer will not use the Software for any purpose other than as expressly permitted by this Agreement. In addition, Customer will not: (i) install, uninstall, copy, assign, sell, rent, sublicense, give away or otherwise transfer the Software, or any portion thereof to a third party; (ii) install or use the Software for or by any service provider, time-sharing or outsourcing service; (iii) alter, modify or create any derivative work of any portion of Software; (iv) translate, reverse-compile, decompile, disassemble, reverse-assemble, trace, or otherwise reverse-engineer the Software or otherwise attempt to learn the operation or source code of the Software; (v) remove any proprietary notices or labels on the Software; or (vi) use the Software at any location other than at Customer’s location(s). Without limiting the license restrictions in this Section and as an additional obligation, Customer will adopt and implement reasonable measures to guard against unauthorized use of Software. BD may suspend or revoke user codes, or take other appropriate action, if BD reasonably believes that a security violation has occurred.

Source Code. The License to the Software is solely to the executable object code of the Software and does not include any license to the source code of the Software.

Documentation. Customer may make copies of the Documentation to the extent reasonably necessary to enable use of the Software in accordance with this Agreement. Customer may not provide such Documentation or copies, or any part thereof, to any third parties.

Site Preparation. The relevant Statement of Work sets forth the specifications for the proper installation and operation of the Software, including a list of compatible hardware and software. Customer is responsible for providing and maintaining a proper environment for the Software in accordance with such Statement of Work and the Documentation, including without limitation the operating system and system requirements for the Software.

Audit Right. No more than once per calendar year during term of this Agreement, and for a period of two (2) years thereafter, or otherwise upon a reasonable basis to believe a breach by Customer of this Agreement has occurred, upon ten days prior written notice from BD, Customer will permit BD, or a representative of BD, the right, but not the obligation, to examine the facilities and systems where any Software are or were used or maintained to the extent required in order to verify compliance with this Agreement. Each such examination will be during Customer’s normal business hours.

2. IMPLEMENTATION.

Performance of Services. Implementation. BD will perform the implementation of the Software for each BD Equipment hereunder as specified in Schedule B (Implementation Statement of Work). Customer represents that all computer systems, computers, laptops, tablets, desktops, etc. and equipment (“Customer Owned Hardware”) on which the Software or BD Equipment will be installed, operated, accessed, or connected are owned and operated by or on behalf of Customer, and that Customer has secured all necessary rights for BD to use such Customer Owned Hardware in the performance of its activities hereunder.

Customer Acceptance. Customer will have a period of time to inspect and test any deliverables associated with the implementation of the Software as specified in Schedule B (Implementation Statement of Work). Upon successful demonstration of the Acceptance Criteria of the Software, BD will invoice the Customer for the annual License Fee.

3. FEES.

In consideration for the License, Customer will pay BD the annual License Fees set forth in Schedule A Section 4 (License Fees). The License Fees will be payable within thirty days from the date of invoice. All payments due hereunder are exclusive of all taxes and duties, which taxes and duties will be the responsibility of Customer. Undisputed 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.

4. OWNERSHIP.

Customer is receiving only the License to use the Software under this Agreement, and no title or ownership of the Software or any portion thereof is transferred by BD to Customer hereunder. All rights, title and interest in and to the Software are, and will remain with BD or the applicable supplier or licensor. Customer will not remove, alter or obscure any of the trademarks or propriety notices on the Software.

IP Ownership. Customer acknowledges and agrees that BD (or the applicable supplier or licensor) shall retain all right, title and interest, including intellectual property or proprietary rights, in and to the Software, and except as expressly set forth in the License, this Agreement does not grant to Customer any right, title or interest in or to the Software. All ideas, modifications, enhancements, improvements, inventions, discoveries, works of authorship, methods, processes, models, algorithms, software technology, technical documentation and other proprietary information or methodologies owned by BD or developed in the performance of this Agreement related to the Software will remain solely and exclusively the property of BD.

Customer Data. Pursuant to Exhibit B, Section 15 (Customer Data”).

5. MAINTENANCE AND SUPPORT.

Maintenance and Support Services. BD will provide the Maintenance and Support Services set forth on Schedule C (Maintenance and Support Services Terms and Conditions), subject to Customer’s payment of the License Fees set forth in Schedule A Section 4 (Fees). Customer must promptly install, or permit BD to install, each Update provided by BD. BD will provide all support via remote access to Customer’s system. If Customer requires that BD provide on-site support, Customer shall be responsible for charges for such support activities at BD’s then current time and material rates.

Updates; Upgrades. “Update” means a bug fix, patch, error correction, enhancement or modification to existing features to maintain the security or operation of the Software. During the Term, BD will install Updates to the Software via BD’s Remote Support Services (“RSS”) or by other means chosen by BD. Customer will not receive advanced notice of the Update. Customer will promptly test the connections between the BD Equipment and Customer’s information system. Updates will not include any upgrades, releases, versions, modules or products that BD licenses or prices separately from the Software or for which BD generally charges additional fees to its licensees receiving maintenance and support. BD may, in its sole and absolute discretion, include in Updates or other products certain features or functionality suggested or requested by or on behalf of Customer at any time, including any customizations or modifications that may be required during the installation of the Software pursuant to this Agreement that BD agrees to perform, and BD will exclusively own all such features and functionality and may provide them to other licensees with or without charge, without any compensation due to Customer, unless otherwise specifically agreed in writing between the Parties. “Upgrade” means a new feature or other improvement to the integral Software, but does not include any hardware, Third Party Software, or any other integral software that BD generally licenses separately. During the Term, if BD generally releases an Upgrade to the Software, then BD will install the Upgrade via RSS or by other means chosen by BD and will deliver notice to Customer of the Upgrade. Customer will promptly test the connections between the BD Equipment and Customer’s information system(s).

6. TERM AND TERMINATION.

- a. Term. Unless terminated early as provided herein, the term of this Agreement commences on the Effective Date and will remain in effect until terminated, and will remain in effect thereafter with respect to any Schedule A entered into prior to the effective date of termination. If a Schedule A does not include an expiration date, the Schedule A shall terminate concurrently with and on the terms set forth in this Agreement (the “Term”).

Termination.

- i. Either party may terminate this Agreement upon the breach of this Agreement by the other party: (a) immediately, if such breach is incapable of being cured as determined by mutual agreement of the parties, or (b) upon ten days written notice if such breach is capable of being cured and remains uncured for thirty (30) days following receipt of written notice thereof.
- ii. Either party may terminate this Agreement upon thirty days' written notice if the other party: (i) makes a general assignment for the benefit of the creditors, or a receiver or similar officer is appointed to take charge of any of its assets; (ii) ceases to carry on its business or operations; (iii) a bankruptcy or similar petition is filed by or against it, and in the case of an involuntary petition, the proceeding is not dismissed within sixty days.
- iii. BD may terminate this Agreement pursuant to Section 9.a (IP Infringement Indemnity).
- iv. Customer may terminate this Agreement pursuant to Section 8.a.iii (Representations and Warranties)

Effect of Termination. Upon the expiration or termination for any reason of this Agreement, Customer will immediately discontinue use of the Software and provide physical or remote access to BD to uninstall the Software from all Customer systems, and return all copies of Documentation to BD and certify as such to BD in writing. Any continued use of the Software by Customer in violation of this Agreement is at Customer's own risk.

7. CONFIDENTIALITY. Pursuant to Exhibit B. Section 16 (Confidential Information).

8. REPRESENTATIONS AND WARRANTIES.

Mutual. Each party represents and warrants that:

- i. It has the power and authority to enter into this Agreement.
- ii. As of the Effective Date, there is no action, suit, proceeding, claim or investigation pending, or to the best of such party's knowledge, threatened against, by or affecting such party's performance under this Agreement.
- iii. It is not, as of the date of this Agreement: (a) excluded in any fashion for any reason from participation in the Medicare, Medicaid, FEHBP, TRICARE/CHAMPUS or any other federally-funded health programs; or (b) controlled by a person or entity that is so excluded. Each party shall notify the other within three business days from receipt of written notice from a federal agency with proper authority, or otherwise becomes aware, that it or a controlling person or entity is so excluded regardless of whether such a determination is appealable by such party or controlling person or entity. Such exclusion shall be grounds for immediate termination of this Agreement by the other party, in its sole discretion, notwithstanding any other provisions of this Agreement.

By Customer. Customer represents, warrants, and covenants that for the duration of the Term, (i) Customer's use of the Software does not and will not invade or violate privacy, personal or proprietary rights, or other common law or statutory right of any third party and (ii) Customer has implemented reasonable and appropriate safeguards to protect data, programs and systems associated with the Software in accordance with legal requirements and industry standards, including appropriate physical and technical safeguards.

By BD. BD represents and warrants that BD will perform the Maintenance and Support Services in a professional and workmanlike manner. In the event of a breach of such warranties, BD will re-perform the Maintenance and Support Services. The foregoing will be Customer's sole and exclusive remedies for the breach of such warranties. Any Misuse, as defined in Schedule C (Maintenance and Support Services Terms and Conditions), may require services not provided for herein ("Professional Services") and additional charges. Customer acknowledges that the limited warranty set forth in this Section does not apply to any Customer or third party software or hardware, whether or not such third party software or hardware is recommended by BD or interoperating with the Software.

Disclaimer. EXCEPT AS SET EXPRESSLY FORTH IN THIS AGREEMENT, THE SOFTWARE AND BD EQUIPMENT ARE PROVIDED "AS IS." THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES MADE BY BD WITH RESPECT TO THIS AGREEMENT, FOR THE SOFTWARE, MAINTENANCE AND SUPPORT SERVICES PROVIDED BY BD HEREUNDER. EXCEPT AS SET EXPRESSLY FORTH IN THIS SECTION, BD MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE PROVIDED HEREUNDER. BD DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. BD DOES NOT WARRANT THAT THE SOFTWARE WILL WORK IN ALL COMBINATIONS SELECTED BY THE CUSTOMER OR THAT THE SOFTWARE WILL MEET THE REQUIREMENTS OF THE CUSTOMER. BD'S EXPRESS WARRANTIES WILL NOT BE ENLARGED, DIMINISHED OR BE AFFECTED BY, AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF, BD'S RENDERING TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE SOFTWARE. WITHOUT LIMITING THE FOREGOING, BD DISCLAIMS ALL WARRANTIES WHATSOEVER (INCLUDING BUT NOT LIMITED TO ANY EXPRESS WARRANTIES) WITH RESPECT TO ANY THIRD PARTY OR CUSTOMER SOFTWARE, WHETHER OR NOT SPECIFICALLY RECOMMENDED BY BD OR INTEROPERATING WITH THE SOFTWARE, INCLUDING CUSTOMER-SOURCED HARDWARE.

9. INDEMNIFICATION.

By BD. During the Term of this Agreement, BD will defend or, at its option, settle, any claim or proceeding against Customer to the extent that it is based on an assertion that the Software infringes any issued United States patent, copyright, or trade secret of any third party ("Infringement Claim") and will indemnify Customer against all costs, damages and expenses finally awarded against the Customer that result from any Infringement Claim. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential Infringement Claim, Customer shall notify BD promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve BD of its obligations only if and to the extent that such delay or failure materially prejudices BD's ability to defend such lawsuit or claim. Customer will give BD sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that BD may not settle the claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer , (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the Software that is the subject of the claim.

- i. The foregoing indemnity will not apply to the extent any third party claim arises from (i) Customer's use, operation and/or combination of the Software with non-BD programs, data or equipment; (ii) Customer's use of the Software that is inconsistent with this Agreement or the Documentation; (iii) Customer's use of Software that is not the most recent, unaltered Update of the Software; (iv) any use of the Software in a process not specified by the Documentation or authorized by BD; (v) any Misuse of the Software as defined in Schedule C (Maintenance and Support Services Terms and Conditions).
- ii. Should such Software become, or in BD's opinion be likely to become, the subject of an Infringement Claim, BD will have the right, at BD's option and expense, (i) to procure for Customer the right to continue using such Software, (ii) to replace or modify it with a non-infringing version of substantially equivalent function and performance, or (iii) to upon Customer's removal and discontinued use of such Software License, refund to Customer an amount equivalent to the License Fees actually paid by Customer for the Software License in the preceding twelve (12) months.
- iii. The provisions of this Section state the sole, exclusive and entire liability of BD, and the sole, exclusive and entire remedy of Customer, with respect to any Infringement Claim relating to any Software.
- iv. BD will defend, indemnify and hold harmless Customer, its officers, directors employees and agents for any losses, costs, damages, liabilities and expenses (including reasonable attorneys' fees and charges and court costs) arising out of any claims, suits or proceedings against Customer by a third party arising out of or relating to BD's gross negligence or willful misconduct or a breach by BD of its warranties in Sections 8.a, except to the extent that any such losses are covered by Customer's indemnity under Section 9.b below.

Intentionally omitted.

Assistance Expenses. The indemnifying party subject to indemnification obligations pursuant to this Section 9 agrees that it will reimburse the indemnified party for any reasonable expenses incurred in providing any assistance. The indemnified party will give the indemnifying party sole control of the defense of the claim or suit and all negotiations for its compromise or settlement; provided, however, that the indemnified party shall have the right at its option and expense to retain separate counsel.

10. LIMITATION OF LIABILITY.

To the maximum extent permitted by applicable law, and except for BD's indemnity obligations or claims arising from BD's gross negligence, willful misconduct or violation of law, in no event will BD's liability to Customer in contract, tort, or otherwise (i) arising out of or in connection with any Software or this Agreement exceed two times (2) the License Fees actually paid by Customer to BD for Software in the previous twelve (12) months. Except as set forth in Section 9, BD will have no liability to Customer under this Software License and Support Agreement for any claim brought against Customer by any third party.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES OR LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL BD BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, OR COMPUTER FAILURE OR MALFUNCTION.

Intentionally omitted.

11. PRACTICE OF MEDICINE. Pursuant to Exhibit B. Section 10.a (Software).

12. UNITED STATES GOVERNMENT. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the

Software and Documentation by the United States Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

13. MISCELLANEOUS.

Injunctive Relief. The parties acknowledge that the agreements of Customer in Section 1.c (Use Restrictions), and the covenants and agreements of both parties are of special and unique character, and that money damages alone may not reasonably or adequately compensate the other party for any breach of such covenants and agreements. Therefore, BD and Customer expressly agree that in the event of the breach or threatened breach of any such covenants or agreements, in addition to other rights or remedies that the parties may have at law, in equity or otherwise, the parties, will be entitled to injunctive or other equitable relief compelling specific performance of, and other compliance with, the terms of such applicable covenants and agreements, which they may seek in any court of competent jurisdiction.

Force Majeure. 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 events or circumstances beyond its reasonable control.

Survival. Any provision that contemplates performance subsequent to any termination of this Agreement will survive the expiration or termination of this Agreement.

Access to Books and Records. To the extent necessary to prevent the disallowance of reimbursement under Section 1861(v)(1)(I) of the Social Security Act and the regulations promulgated thereunder, until the expiration of four (4) years after the furnishing of services under this Agreement described above, each party shall make available, upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of such services. Moreover, in the event that a party carries out any of its duties in furnishing the above services through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of those services under said subcontract, the related organization shall make available, upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, a copy of the subcontract and such books, documents and records of the related organization as are necessary to verify the nature and extent of the costs of the services furnished by said organization under the subcontract.

This Software License and Support 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.

IN WITNESS WHEREOF, each party has caused this Software License and Support 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: San Bernardino County on behalf of Arrowhead Regional Medical Center

Becton, Dickinson and Company

Agreed to By: _____
Print Name: Dawn Rowe
Print Title: Chair, Board of Supervisors
Date: _____

Agreed to By: *Samuel Coulter*
Print Name: Samuel Coulter
Print Title: Manager, Commercial Capital Contracting
Date: Jul 19, 2024

SCHEDULE A: PACFD33361

This Schedule A PACFD33361 ("Schedule A") is entered into by BECTON, DICKINSON AND COMPANY ("BD") and the Customer designated below. This Schedule A incorporates by reference: (i) the Software License and Support Agreement with an Effective Date of this BD Acquisition Agreement, and (ii) any Schedule applicable to the software provided under this Schedule.

A. BD EQUIPMENT

Name of Facility	Address	Equipment Description	Equip. Qty
San Bernardino County on behalf of Arrowhead Regional Medical Center	400 N Pepper Ave. Colton, CA 92324	BD BACTEC FX - Top Unit	3
		BD BACTEC FX - Bottom Unit	2
		Synapsys NUC Computer	1

B. PROJECT COORDINATORS

Customer		BD	
Name:		Name:	
Telephone:		Telephone:	
Email:		Email:	

C. TERM. The term of this Schedule A will commence on the Effective Date of this BD Acquisition Agreement and expires in five(5) years

D. LICENSE FEES. License Fees:

BD Synapsys™ for BD BACTEC™	Catalog #	Qty	Price per unit	Total Annual Price	Total Term Price
BD Synapsys Laboratory Solutions	444150	1	The cost of the Software License is included with the price of the Consumables through the expiration of this Agreement.		
Connectivity & Workflow license	444157	3			
Advanced Analytics license	444156	1			

Customer will provide the required virtual environment as per the BD Synapsys specifications.

This Schedule A 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 Schedule A (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 Schedule A upon request.

IN WITNESS WHEREOF, 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 Schedule A.

CUSTOMER: San Bernardino County on behalf of Arrowhead Regional Medical Center

Becton, Dickinson and Company

Agreed to By: _____
Print Name: Dawn Rowe
Print Title: Chair, Board of Supervisors
Date: _____

Agreed to By: _____
Print Name: Samuel Coulter
Print Title: Manager, Commercial Capital Contracting
Date: Jul 19, 2024

SCHEDULE B - IMPLEMENTATION STATEMENT OF WORK

1. **Background.**
 - a. This Implementation statement of work (SOW) serves to document the services to be performed and the deliverables to be provided in connection with the implementation of the Software with respect to the BD Equipment under this Agreement.
 - b. Implementation Strategy. Each party is responsible for carrying out the work assigned to it in this SOW. The project work will be performed at BD and Customer location(s); however, the details of such project work will be determined during a project kick-off meeting regarding implementation between the Project Team and other representatives of each party (the "**Project Kick-Off Meeting**").
 - c. Customer Requirements and Site Readiness.
 - i. With respect to the On-Premises Application (as defined below), Customer will be solely responsible for obtaining, implementing and maintaining the following:
 1. All required infrastructure, hardware and related systems, third party software, network access, and Internet connection;
 2. All network, system and procedural security and safeguards (including firewall and intrusion detection); and
 3. Availability, scalability, performance and dependability of any of the foregoing.Customer will be solely responsible for any and all costs, license fees and taxes relating to subsections 1, 2, and 3.
 - ii. Provision of the necessary network environment of physical or virtual servers, infrastructure, connections and applications ("**Network Environment**") to support the On-Premise Application of the Software. Detailed technical requirements will be provided at or prior to the Project Kick-Off Meeting. Customer must provide BD with remote access to the on-premises server where the Software is to be installed, using RSS.
 - iii. For Enterprise Analytics, Customer shall provide BD access to the on-premises server required for communication with the BD cloud hosted enterprise server.
 - d. Change Order/Additional Services. Following execution of this SOW as part of the Agreement, any clarification to the outlined deliverables or services herein or any change requests for additional functionality not specifically outlined in this document that are to be included in the delivery of this project, shall be memorialized via an Amendment that shall be executed by both parties.
2. **Services.** BD implementation services shall be provided remotely. Product training will be conducted one time. Any implementation activities requiring BD personnel to be on-site will incur additional charges which shall be billed at BD's then current rates for time and materials. BD will assist the Customer with the following tasks:
 - a. Implementation
 - i. Implementation Deliverables.
 1. Install Synapsys on premise (the "**On-Premises Application**") in the Customer Owned Hardware or virtual machine (compliant with BD provided specifications including Operating System and SQL requirements).
 2. Install and configure Synapsys cloud application for BD Veritor™ Plus POC system as needed.
 3. Install and configure Synapsys Enterprise Analytics in the BD cloud hosted enterprise server.
 - ii. Connect and interface the BD Equipment with the On-Premise Application. The number of connected BD Equipment will be same as the number of purchased Licenses.
 - iii. Configure connection between the on-premises and BD cloud hosted servers for Enterprise Analytics.
 - iv. Software configuration including setting up user roles/access, reports, rules, and dashboards.
 - v. Interface with a single hospital IT (HIT) destination, for example, such as an interfacing middleware, or laboratory information system (LIS) (the "**HIT System**"). Customer shall make internal HIT resources available, and coordinate availability of third party vendor resources if required, to ensure interfacing can be completed and fully tested.
 - vi. BD applications team will conduct on-site product training except for BD Veritor™ Plus POC system connectivity. On-site training will be done once during the initial installation of Synapsys. Training for BD Veritor™ Plus POC system connectivity will be conducted remotely.
 - vii. Once implementation is completed, BD will transfer to Post Go-live support.
 - viii. BD will provide prompt notice to Customer if it determines at any time that there will be any delay in completing the installation. Customer acknowledges that Customer's timely, complete and accurate performance of its obligations hereunder is essential to BD meeting any targeted completion date. In the event Customer delays installation for any reason beyond fifteen business days from the scheduled dates, BD reserves the right to invoice Customer for the Software.
 - ix. The Customer technical resource shall:
 1. Provision a virtual environment to the requirements defined in the BD Synapsys™ Product Security Whitepaper provided as part of product discussion
 2. Provide appropriate user credentials for administrative access to the virtual server environment by BD implementation associates to complete the installation.
 3. Provide remote connectivity to computing environment, accessible by BD for ongoing support activities.
 4. For Enterprise Analytics, Customer shall provide BD access to the on-premises server to communicate with the BD cloud hosted server for Enterprise Analytics.
 - x. A BD Technical Implementation Specialist will:
 1. Remotely install and configure the Software.
 2. Conduct product training and an acceptance test as outlined below, upon completion of the installation.
 - b. Acceptance Testing and Acceptance Criteria
 - i. Upon completion of implementation deliverables, BD shall perform testing ("Acceptance Testing") which may require support from Customer's IT team to confirm correct result delivery to the Software. This Acceptance Testing shall demonstrate the following acceptance criteria (the "**Acceptance Criteria**"):
 1. The connected BD Equipment is able to communicate with and transfer data to the Software.
 2. The collected data can be provided in reports and dashboards (if applicable).
 3. Results from the BD Equipment are available for the HIT System as per the BD interface specification.
 4. For Enterprise Analytics :
 - a. The on-premises server can communicate with the BD cloud hosted server for Enterprise Analytics.
 - b. The aggregated data can be used by the appropriate analytics.
 5. Product training is completed.
 - ii. Customer will have twenty business days (the "**Notice Period**") from the date Acceptance Testing is completed by BD to confirm that the Software materially performed in accordance with the Acceptance Criteria.
 - iii. Customer may require support from Customer's HIT vendor to confirm correct result delivery and display within the target HIT System. Customer will be responsible for ensuring qualified resources (IT and HIT vendor) are available to complete the connectivity. BD and Customer will each provide its interface specifications at the start of the project.
 - iv. Customer shall notify BD in writing within the Notice Period if Customer believes, in good faith, that the Software does not materially perform in accordance with the Acceptance Criteria ("Non-conformity"). If Customer provides written notice of such Non-conformity, including the reasons for such belief in reasonable detail, BD will use commercially reasonable efforts to correct the Non-conformity and the Parties will retest the Software.
 - v. If BD does not correct any such Non-conformity within sixty business days from the end of the Notice Period ("**Cure Period**"), then Customer may terminate this Agreement upon written notice to BD.
 - vi. The Software acceptance date (the "**Acceptance Date**") will be the earliest date on which any of the following occur (a) the date Customer verifies that the Software has passed the Acceptance Criteria (upon which Customer will provide prompt written notice to BD of such acceptance, and which acceptance shall not be unreasonably withheld or delayed), (b) the date Customer puts the Software into production use; (c) the last day of the Notice Period if Customer does not notify BD in writing during the Notice Period of its good faith belief that the Software has not performed in accordance with the Acceptance Criteria or (D) the last day of the Termination Option Period if Customer does not notify BD in writing during the Termination Option Period of its intent to terminate the Agreement.
 - vii. Without limiting the generality of the foregoing, Customer may not withhold or delay the Acceptance Date for non-material defects and any such withholding or delay of Acceptance Date for such non-material defects will not affect Customer's obligation to pay any License Fee. A defect is material if a main function of the Software or BD Equipment is missing or substantially disrupted, if the defect causes the Software or BD Equipment either to break down or to distort saved or to be saved data, or if the

Software substantially disrupts other programs used by Customer. All other defects and deficiencies are deemed to be non-material. Customer expressly acknowledges that errors discovered in or due to any third party or Customer software or hardware, including without limitation defects or deficiencies in Customer's information technology systems, will not be grounds for Customer to withhold or delay the Acceptance Date of the Software. Upon the Acceptance Date, BD will invoice the Customer for the annual License Fee.

3. **Schedule and Responsibilities.**

a. **BD Responsibilities.**

i. **Key Personnel.** BD shall provide a Project Manager who will be the primary single Point of Contact for all communications with Customer's Project Manager and to serve as the interface between BD and all its permitted subcontractors participating in this project. BD's Project Manager is a "**Key Personnel**". BD shall provide Customer with any changes to Project Manager via electronic mail.

b. **Customer Responsibilities.**

i. Provide commercially reasonable resources for Project Team as determined during Project Kickoff Meeting.

ii. Appoint a Project Manager for all communications with BD's Project Manager. Customer's Project Manager shall provide project and operational guidance, and shall serve as the interface between BD and all Customer departments participating in this project.

iii. Notwithstanding anything to the contrary in the Agreement, Customer shall develop and provide an interface to the HIT System based upon interface specifications which will be provided to the Customer by BD at the start of the Project. Notwithstanding the foregoing, any failure or delay in the development of the HIT System interface by Customer shall not delay the installation of the BD Equipment by BD, and upon such installation in the absence of connectivity between the HIT System and the Software and BD Equipment, the Software shall be deemed accepted by Customer.

iv. If Customer does not fulfill any of its installation services obligations or as required under the Project Plan; a) Customer shall be liable for BD's damages as a result of any delay; and b) BD shall be entitled to postpone its obligations and reschedule the activities under the Project Plan.

v. For use of Veritor through WiFi: Each BD Veritor interfaced with BD Synapsys informatics via a WiFi connection requires Customer to complete a device registration in BD Synapsys prior to use. Device registration is required for secure communication of results to Synapsys. The following steps shall be performed by Customer to register Veritor devices for use:

1. Contact BD customer support to designate one or more authorized users and obtain secure access to the Synapsys device registration functionality.
2. Configure the Veritor device(s) for connectivity to the local WiFi network infrastructure.
3. Access Synapsys to register Veritor device serial number(s) to Customer.

SCHEDULE C: MAINTENANCE AND SUPPORT SERVICES TERMS AND CONDITIONS

Contingent upon payments of the License Fees, BD agrees to provide and Customer agrees to accept these Maintenance and Support Services Terms and Conditions for the Software in accordance with the terms herein:

1. **Support Hours.** Support under this Agreement shall be provided during BD's regional support office hours as follows:
 - a. In the United States, telephone service is available 24 hours per day, 7 days per week.
 - b. Customer may obtain support by calling BD's toll-free number 800-638-8663.
 - c. The following support hours are offered:
 - i. Mon-Fri: 7:00AM – 8:00PM EST.
 - ii. Sat/Sun: 7:00AM – 3:00PM EST.
 - d. The following on call service hours are offered:
 - i. Mon-Fri: 8:00PM EST -7:00AM EST
 - ii. Sat/Sun:3:00PM EST – 7:00AM EST
2. **Service Levels.**
 - a. Support Services. After a request for service support (the "Request") is made, it is assessed based on its severity and impact to the Customer. BD's US support teams use the following work order priority codes
 - b. Emergency – 1 Day response expectation
 - i. Customer perception is that the lab cannot maintain workflow
 - ii. Safety hazard
 - c. Non-emergency: Lab is operational with limited capacity, but requires service
 - d. Low (PM): Scheduled support work including installations, upgrades, trainings etc.
3. **Software Request Services.**
 - a. BD will notify Customer of any new Software releases, patches and updates and provide notes of such release.
 - b. BD will notify Customer of any patches, updates or scripts (a "Programmatic Fix") and provide notes of such release.
 - i. Programmatic Fixes applied to the On-Premise Software will be performed by BD. The Customer will provide remote access and must submit a support request to schedule maintenance activities.
 - c. If Customer experiences a reproducible problem (i.e. one that can be repeated within the Customer environment or defined conditions) with the Software, BD will provide Maintenance and Support Services remotely to provide a suitable resolution. Such remedial work may comprise, as appropriate:
 - i. Telephone consultation.
 - ii. Fault diagnosis by remote network connection.
 - iii. Provision of an intermediate or permanent "workaround".
 - d. If the reproducible problem identified in section 3.c persists and requires a Programmatic Fix, BD will work with the Customer to define the resolution and deliver it in mutually agreeable timeframe.
4. BD shall support the current version of the Software and the immediate previous version of the licensed Software.
5. **Excluded from Maintenance and Support Services:**
 - a. Exclusions.
 - i. Visits to the Customer's sites by BD personnel; such visits, where necessary, will be charged at BD's then current time and materials rates .
 - ii. Support of any software or system not supplied by BD.
 - iii. Any updates, upgrades, or other changes to any HIT System.
 - iv. Support, re-installation or restoration of the Software as a result of Customer changing hardware, an operating system (virtualized or physical), or an LIS, or other middleware platform.
 - v. Resolve problems addressed in an available Update provided to but not implemented by the Customer.
 - b. "Misuse". BD's obligations under the Maintenance and Support Services does not apply to operational failures when the Software performs according to BD standards and the failure is a result of a problem outside of BD's reasonable control. Without limiting the generality of the foregoing, BD is not obligated to provide Maintenance and Support Services in the following situations:
 - i. Support of the Software due to errors attributable to failure or errors or use of other third party software or hardware not supplied by BD hereunder or network, power or connectivity outages.
 - ii. Support of the Software due to errors resulting from any modifications or alterations made to the Software by any person other than BD or an authorized representative of BD.
 - iii. Support of the Software at any location other than Customer's location(s).
 - iv. Support of the Software due to accident, improper operation, neglect, or misuse of the Software or any other causes beyond BD's control.
6. **Customer Responsibilities.**

Customer shall:

 - a. Designate an agreed list of contacts for the purposes of administering this Agreement. Such a list can consist of named individuals or descriptive role names understanding that is the responsibility of the customer to
 - i. Ensure at least one point of contact is available at all times
 - ii. Update the list when necessary to capture resource and individual changes
 - b. Provide and allow secured remote access to Customer's internal network for BD to perform Maintenance and Support Services.
 - c. Maintain and operate the Software in an environment (i.e. Customer owned hardware or virtual machine) according to industry standards and the Documentation and specifications set forth in the relevant Statement of Work, and other written guidelines provided by BD to Customer from time to time.
 - d. Ensure that all Updates and Upgrades to the Software are implemented as provided by the terms of this Agreement.
 - e. Notify BD at least thirty days prior to any changes or modifications to any HIT Systems to which the Software is connected, or the operating system or software or hardware that supports the Software (but not part of Software), including any changes to an LIS, or other middleware platform. Such changes may be excluded and require Professional Services at additional charge.
 - f. Not permit any persons other than BD's technical service employees or authorized representatives to carry out any maintenance, service or support of the Software.
 - g. Implement reasonable and appropriate safeguards to protect data, programs and systems associated with the Software in accordance with legal requirements and industry standards, including appropriate physical and technical safeguards.

SCHEDULE D: THIRD PARTY SOFTWARE

This Schedule governs Customer's access to and use of software or databases provided by BD that owned by a third party (collectively referred to as "Third Party Software"). Customer's right to use such Third Party Software, and the BD Software and BD Equipment that contain them, is subject to compliance with this Agreement between the Parties and these terms. In the event of any conflict between these terms and those of any end user license agreement that may be presented in electronic form during use of the Third Party Software, these terms shall take precedence.

1. **Ownership.** Third Party Software is licensed, not sold, by BD to Customer. All title and intellectual property rights in and to Third Party Software (including, but not limited to, code sequence, logic, structure and screens) and documentation, and in and to any improvements, enhancements, updates, or upgrades thereto, including concepts and technology inherent in Third Party Software, are and at all times shall remain, the sole and exclusive property of a third party and/or its affiliates ("Third Party"). Third Party Software is protected by copyright laws as well as other intellectual property laws and treaties. Customer's possession, use, or access to Third Party Software does not transfer any ownership of Third Party Software nor any intellectual property rights to Customer. All rights not expressly granted under this Schedule are reserved by BD or Third Party. Nothing contained in this Schedule shall be construed directly or indirectly to assign or grant to Customer any right, title or interest in or to trademarks, service marks, copyrights, patents, or trade secrets of Third Party, or any ownership rights in or to the Third Party Software.
2. **Use.** Customer may use Third Party Software only in conjunction with BD Software and BD Equipment provided to Customer by BD, and not as a stand-alone product. The license granted herein does not include a license to use the Third Party Software for development, testing or support purposes.
3. **Copies.** Customer may not make any copies of Third Party Software for any purpose unless expressly authorized by BD. Customer must erase or destroy all Third Party Software upon notice from BD.
4. **Restrictions.** Except as permitted by applicable law, Customer shall not:
 - a. work around any technical limitations in Third Party Software;
 - b. reverse engineer, de-compile, translate, disassemble or otherwise attempt to derive source code from the Third Party Software, in whole or in part;
 - c. allow access or permit use of the Third Party Software by any user other than that permitted by BD in Customer's license agreement with BD;
 - d. modify or create derivative works based upon Third Party Software;
 - e. publish Third Party Software, or post any portion of it on public bulletin boards, websites, Internet domains, or online chat rooms;
 - f. sell, rent, lease, lend, license, sublicense or otherwise transfer, in whole or in part, Third Party Software or related documentation to any third party;
 - g. use Third Party Software in connection with, through or to an application service provider, or using other similar network hosting methods; or
 - h. alter, remove or destroy and will take commercially reasonable steps to prevent the alteration, removal or destruction of, any Third Party copyright notice, trade secret or other proprietary rights notice from Third Party Software.

For the Software, including the Third Party Software, Customer shall provide the same level of security for Third Party Software as it provides for its own products, but in no event less than reasonable care, to prevent third parties from performing such activities.

5. **Internet-Based Services.** Third Party Software may contain components that enable and facilitate the use of certain Internet-based services. Customer acknowledges and agrees that Third Party may automatically check the version of Third Party Software and/or its components that Customer is using and may provide upgrades or supplements to Third Party Software which may be automatically downloaded. No personally-identifiable information will be obtained through these services.
6. **No Warranties.** THIRD PARTY SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. BD AND THIRD PARTY EXCLUDE AND DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
7. **Liability Limitations.** Customer agrees that, regardless of the form of any claim, neither BD nor Third Party has any liability for damages, whether direct, consequential, special, punitive, indirect or incidental, for anything related to Third Party Software. This limitation also applies even if BD or Third Party should have been aware of the possibility of damages.
8. **Termination.** Without prejudice to any other rights, BD may terminate this license to use Third Party Software if Customer fails to comply with the terms of this Schedule.

EXHIBIT F

Insurance Requirements

BD agrees to provide insurance set forth in accordance with the requirements herein. If BD uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, BD agrees to amend, supplement or endorse the existing coverage to do so. BD reserves the right to self-insure.

1. Without in anyway affecting any indemnity obligations provided and in addition thereto, BD shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of BD and all risks to such persons under this contract. If BD has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – BD shall carry General Liability Insurance covering all operations performed by or on behalf of BD providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Personal injury.
 - v. Contractual liability.
 - vi. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If BD is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If BD owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements.
 - e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a "claims made" policy, then such policies will be maintained for a period of three (3) years following expiration or termination of this Agreement.
 2. **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.
 3. **Waiver of Subrogation Rights.** BD shall require the carriers of required coverages to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit BD and BD's employees or agents from waiving the right of subrogation prior to a loss or claim. BD hereby waives all rights of subrogation against Customer.
 4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer to the extent of any indemnification owed by BD to customer
 5. **Severability of Interests.** BD agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between BD and Customer or between Customer and any other insured or additional insured under the policy.
- Proof of Coverage.** Arrowhead Regional Medical Center will retrieve evidence of coverage at <https://online.marsh.com/marshconnectpublic/marsh2/public/moi?client=D409> . additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder.
6. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
 7. **Failure to Procure Coverage.** In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by BD or Customer payments to BD will be reduced to pay for Customer purchased insurance.

EXHIBIT G

Onsite Service Provider Requirements

BD agrees to the following Onsite Service Provider Requirements to the extent such requirements are not inconsistent with BD's policies and procedures.

A. Compliance with Customer Policy

In performing the services and while at any Customer facilities, BD personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the Customer regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the Customer; and (d) abide by all laws applicable to the Customer facilities and the provision of the services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "Customer Policies"). Customer Policies, and additions or modifications thereto, may be communicated orally or in writing to BD or BD personnel or may be made available to BD or BD personnel by conspicuous posting at a Customer facility, electronic posting, or other means generally used by Customer to disseminate such information to its employees or Contractors. BD shall be responsible for the promulgation and distribution of Customer Policies to BD personnel to the extent necessary and appropriate. Customer shall have the right to require BD's employees, agents, representatives and subcontractors to exhibit identification credentials issued by Customer in order to exercise any right of access under this contract.

B. Background Checks for BD Personnel

BD shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the Customer; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the Customer and not in violation of applicable law, BD shall conduct a background check, at BD's sole expense, on all its personnel providing Services. If requested by the Customer, BD shall provide the results of the background check of each individual to the Customer. Such background check shall be in the form generally used by BD in its initial hiring of employees or contracting for Contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. BD personnel who do not meet the Customer's hiring criteria, in Customer's sole discretion, shall not be assigned to work on Customer property or Services, and Customer shall have the right, at its sole option, to refuse access to any contract personnel to any Customer facility.

C. Drug and Alcohol Free Workplace

C.1 In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this contract, BD agrees that BD and BD's employees, while performing service for the Customer, on Customer property, or while using Customer equipment:

- C.1.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.1.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.1.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where BD or BD's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

BD shall inform all employees that are performing service for the Customer on Customer property, or using Customer equipment, of the Customer's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the Customer.

C.2 The Customer may terminate for default or breach of this contract and any other contract BD has with the Customer, if BD or BD's employees are determined by the Customer not to be in compliance with above.

D. Employment Discrimination

During the term of the contract, BD shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. BD shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and Customer laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

E. Environmental Requirements

- E.1** In accordance with Customer Policy 11-08, the Customer prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The Customer requires BD to use recycled paper for any printed or photocopied material created as a result of this contract. BD is also required to use both sides of paper sheets for reports submitted to the Customer whenever practicable.
- E.2** To assist the Customer in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), BD must be able to annually report the Customer's environmentally preferable purchases. BD must also be able to report on environmentally preferable goods and materials used in the provision of their service to the Customer, utilizing a Customer approved form.

F. Licenses, Permits and/or Certifications

BD shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, Customer, and municipal laws, ordinances, rules and regulations. BD shall maintain these licenses, permits and/or certifications in effect for the duration of this contract. BD will notify Customer immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this contract.

G. Air, Water Pollution Control, Safety and Health

BD shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this contract.

H. Subcontracting

- H.1** BD shall obtain Customer's written consent, which Customer may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to Customer. At Customer's request, BD shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the Customer, resumes of proposed subcontractor personnel. BD shall remain directly responsible to Customer for its subcontractors and shall indemnify Customer for the actions or omissions of its subcontractors. All approved subcontractors shall be subject to the provisions of this contract applicable to BD Personnel.
- H.2** For any subcontractor, BD shall:
- H.2.1** Be responsible for subcontractor compliance with the contract and the subcontract terms and conditions; and
 - H.2.2** Ensure that the subcontractor follows Customer's reporting formats and procedures as specified by Customer.
- H.3** Upon expiration or termination of this contract for any reason, Customer will have the right to enter into direct Contracts with any of the Subcontractors. BD agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with Customer.

I. Damage to Customer Property

BD shall repair, or cause to be repaired, at its own cost, all damages to Customer vehicles, facilities, buildings or grounds caused by the willful or negligent acts of BD or its employees or agents. Such repairs shall be made immediately after BD becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If BD fails to make timely repairs, the Customer may make any necessary repairs. BD, as determined by the Customer, shall repay all costs incurred by the Customer for such repairs, by cash payment upon demand, or Customer may deduct such costs from any amounts due to BD from the Customer, as determined at the Customer's sole discretion.



EXHIBIT H

Campaign Contribution Disclosure (SB 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidiary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. All references to "Contractor" in this Exhibit refer to BD. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: Becton, Dickinson and Company

2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes If yes, skip Question Nos. 3-4 and go to Question No. 5 No

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: N/A

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

N/A

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above): See attached Exhibit 21 List of Subsidiaries

Company Name	Relationship

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No If **no**, please skip Question No. 10.

Yes If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Agreement, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Agreement is being considered and for 12 months after a final decision by the County.