

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-10

Urgent

Routine

AGENDA DATE April 6, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Rescind the Sole-Source Purchase of a Polymerase Chain Reaction (PCR) System with Roche Diagnostic Corporation and Approve a Revised Project to Purchase, Renovate, and Install a Polymerase Chain Reaction (PCR) System for the Health Services Agency Public Health Laboratory

STAFF RECOMMENDATIONS:

1. Approve the rescission of the December 22, 2009 authorization for the sole-source purchase of a polymerase chain reaction (PCR) system with Roche Diagnostic Corporation.
2. Approve a revised project to purchase, renovate and install a polymerase chain reaction (PCR) system for the Health Services Agency Public Health Laboratory.

(Continued on Page 2)

FISCAL IMPACT:

On December 22, 2009, the Stanislaus County Board of Supervisors approved a Polymerase Chain Reaction (PCR) project budget not to exceed \$376,585. The project budget approved by the Board included funding of \$281,585 for equipment and \$95,000 for construction costs associated with minor renovations at the Health Services Agency Public Health Laboratory. The Board also approved that the project be funded by Homeland Security Grant funding to the Stanislaus County Office of Emergency Services of \$281,585, Public Facility Fees (PFF) of \$66,431 and Health Services Agency Public Health laboratory fund balance of \$28,569.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2010-190

On motion of Supervisor O'Brien, Seconded by Supervisor DeMartini
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFFING RECOMMENDATIONS: (Continued)

3. Authorize the Purchasing Agent to issue three separate purchase orders for the sole-source purchases as approved by the State of California: California Emergency Management Agency (CAL-EMA) Grants Management Division for Fiscal Year 09 State Homeland Security Grant Program of a polymerase chain reaction (PCR) system, to include Applied Biosystems for the ABI 7500 Fast DX; Roche MagNA Pure LC 2.0 System; and the QIAcube within the previously approved project budget.
4. Authorize the Chief Executive Officer or his designee to execute and sign the agreements for the purchase of the Applied Biosystems for the ABI 7500 Fast DX; Roche MagNA Pure LC 2.0 System; and the QIAcube within the previously approved project budget.

FISCAL IMPACT: (Continued)

At this time staff is returning to the Board for approval to rescind the sole-source purchase authorization of a polymerase chain reaction (PCR) system with Roche Diagnostic Corporation, as approved by the State of California: California Emergency Management Agency (CAL-EMA) Grants Management Division for Fiscal Year 09 State Homeland Security Grant Program.

Staff is also requesting Board approval to authorize the Purchasing Agent to issue three separate purchase orders for the sole-source purchases as approved by the State of California: California Emergency Management Agency (CAL-EMA) Grants Management Division for Fiscal Year 09 State Homeland Security Grant Program of a polymerase chain reaction (PCR) system to include Applied Biosystems for the ABI 7500 Fast DX; Roche MagNA Pure LC 2.0 System; and the QIAcube.

With the Board's approval of these actions both the project budget and funding plan remain unchanged. There is no additional impact to the General Fund associated with this item.

DISCUSSION:

On December 22, 2009, the Board of Supervisors authorized the sole-source purchase of a polymerase chain reaction (PCR) system, which included a Roche Light Cycler 480, Roche MagNA Pure 96, as well as associated first year maintenance agreement costs. The sole-source authorization was based on the following requirements and abilities:

- A. To perform clinical/diagnostic, surveillance and epidemiologically- based testing;
- B. To use previously validated, no cost testing kits provided by the State Public Health Laboratories (i.e. Viral and Rickettsial Diseases Laboratory and Microbial Diseases Laboratory) with minimal adaptation;
- C. To receive support from the State Public Health Laboratories on both technical/operational equipment issues;
- D. To ensure the Stanislaus County Public Health Laboratory compliance with CLIA standards; and
- E. To enable the Stanislaus County Public Health Laboratory to quickly adapt to health concerns impacting its community.

Prior to the Board's approval in December, in-depth discussions were held with Roche describing the intended uses of their product in the Stanislaus County Public Health Laboratory. Following the sole-source approval by both the California Emergency Management Agency (CAL-EMA) and the Board, procurement procedures commenced with a review of Roche equipment procurement documents—e.g. terms and conditions of use, extended maintenance agreement. This review revealed that the PCR equipment in that project solution was not approved by the vendor for any in-vitro diagnostic use. Additionally, if the County was to perform diagnostic testing on the stated equipment the County would have breached conditions of the extended maintenance agreement, jeopardizing not only the cost of the agreement—i.e. approximately \$29,500—but also making the County subject to a more costly fee-for-service arrangement for both equipment annual maintenance and repair needs. Follow-up communications between Roche and the County confirmed this assessment. A revised PCR project solution, which includes three separate vendors—e.g. *Applied Biosystems, Roche, and Qiagen*—has now been identified that meets all of the County's requirements as described above.

At this time staff is returning to the Board for approval to rescind the sole-source purchase of a polymerase chain reaction (PCR) system with Roche Diagnostic Corporation, as approved by the State of California-California Emergency Management Agency (CAL-EMA) Grants Management Division for Fiscal Year 09 State Homeland Security Grant Program.

Staff is also requesting Board approval to authorize the Purchasing Agent to issue three separate purchase orders for the sole-source purchases as approved by the State of California: California Emergency Management Agency (CAL-EMA) Grants Management Division for Fiscal Year 09 State Homeland Security Grant Program of a polymerase chain reaction (PCR) system to include Applied Biosystems for the ABI 7500 Fast DX; Roche MagNA Pure LC 2.0 System; and the QIAcube.

The revised PCR project includes the following core piece of testing equipment:

| Item | Vendor | Model | Function |
|------|--------------------|-------------------|------------------------------------|
| A | Applied Biosystems | ABI 7500 Fast Dx | Amplification & Analysis |
| B | Roche | MagNA Pure LC 2.0 | Extraction-Higher Volume Solution |
| C | Qiagen | QIAcube | Extraction-Smaller Volume Solution |

**Refer to "Attachment A" for a diagram on the role of each component of the PCR system/platform.*

Though the proposed revised project solution for Board consideration is comprised of three different vendors it is thought to be of even greater benefit to the Stanislaus County community in that the revised PCR project solution proposal:

- Has a component, the ABI 7500 Fast Dx, that is approved by the Food and Drug Administration (FDA) for some in-vitro diagnostic use;
- Has a component, the ABI 7500 Fast Dx, that appears to be the only system on the market today with software containing complete Food and Drug Administration (FDA) approval for in-vitro diagnostic use;
- Has a component, the ABI 7500 Fast Dx, that is strongly supported and recommended for procurement by the State Viral and Rickettsial Diseases Laboratory (VRDL)
- Has extraction components, namely the MagNA Pure LC 2.0 or QIAcube, that can engage in more cost-effective testing by offering more scalable extraction options; and
- Is anticipated to have a lower overall cost than the initial proposal.

Altogether this revised PCR project proposal would enable Health Services Agency Public Health division to more rapidly and effectively detect and control several common naturally occurring diseases. In Stanislaus County, diseases such as tuberculosis, pertussis (whooping cough), and norovirus continue to be diseases of relatively high incidence, causing significant human suffering and health care costs. For example, Stanislaus County has an average of 18 norovirus outbreaks reported to Public Health each year. Most of these occur in facilities for the elderly, posing significant health risks to this vulnerable population. Rapid control of the spread of this viral agent is imperative, but is hindered because the specimens must be shipped to a lab outside the jurisdiction. Additionally, in recent years, the county has experienced two large pertussis outbreaks. The timeliness and effectiveness of control efforts in these instances is compromised by the long turn-around time required for the cultivation of the organism and its relatively low sensitivity. Results of pertussis PCR analysis can be available within a few hours, allowing faster detection and mitigation of pertussis, as well as other diseases of public health significance.

Furthermore, PCR testing is clinically significant. For the current influenza situation, it can distinguish between seasonal flu and the H1N1 "Swine influenza", which is

significant in aiding physicians to prescribe treatment plans for their patients. The PCR test for novel H1N1 "Swine influenza" is also an example of a diagnostic test and illustrates why having a PCR system/platform that is approved for in-vitro diagnostic use is so important.

In conclusion, local PCR testing would provide for identification and control of emerging natural diseases (such as norovirus, pertussis"), would ensure a more rapid and effective treatment of patients, the detection and response to a biological attack, as well as not being reliant on outside labs for this type of testing as this county is currently.

Construction and Remodeling Activities

On December 22, 2009, the Board authorized the Chief Executive Office to issue a request for proposal (RFP) for a licensed contractor for the minor renovations needed at the Public Health Lab to accommodate the installation of the equipment, and authorized the Project Manager to issue a notice inviting bids; and to modify the issuance date if necessary. The renovation needs are unchanged as a result of the revised project. The associated costs to renovate the new lab space also remain unchanged.

POLICY ISSUES:

Approval of these recommendations supports the Board priorities of *A safe community, A healthy community, and Efficient delivery of public services* by enhancing public health's ability to respond to natural, chemical, and biological threats in Stanislaus County community.

STAFFING IMPACT:

Chief Executive Office Capital Projects, Health Services Agency Public Health, and Office of Emergency Services staff will collaborate to ensure the project is implemented.

CONTACT:

Patricia Hill Thomas, Chief Operations Officer. Telephone: 209-525-6333



Quotation

North American
Sales and Service
850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
(800)874-9868; F(650)638-5875

PAGE 1 of 12

To: ERIC CUBILLO
STANISLAUS COUNTY
820 Scenic Drive
MODESTO CA 95353

Quote No.: 20627575
Quote Valid To: 04/30/2010
Quote Date: 01/12/2010
Pay Terms: Net 30 Days
Freight Terms: FOB FACTORY - FRT
QUOTED

Telephone No.
Fax No.

**Please reference Quote No.
when placing your orders.**

| Item | Part Number | Description | QTY | Unit List Price | Unit Net Price | Total Extended Price |
|------|-------------------|--|------|-----------------|----------------|----------------------|
| 0001 | 4406984 | 7500 FAST Dx INSTRUMENT,LAPTOP The Applied Biosystems 7500 Fast Dx Real-Time PCR Instrument with the SDS v1.4 Security, Auditing and E-Signature software is a real-time nucleic acid amplification and detection system that measures nucleic acid signals from reverse transcribed RNA and converts them to comparative quantitative readouts using fluorescent detection of dual-labeled hydrolysis probes. The 7500 Fast Dx Real-Time PCR Instrument is to be used only by technologists trained in laboratory techniques, procedures and on use of the analyzer. Customer is responsible for any validation of assays and compliance with any regulatory requirements that pertain to their procedures and uses of the instrument. INCLUDES * 7500 Fast Dx Real-Time PCR Instrument & Software Kit * Tower or Notebook Computer * Precision plate holder for tubes/strips * User Manuals * Installation by certified service engineer * One year warranty for parts, labor, travel, and one service engineer visit at 6-month after installation | 1.00 | 65,900.00 | 60,625.00 | 60,625.00 |
| 0002 | ZGD2-SC7500FASTDX | SVC, 7500FASTDX, 2 OQ/PQ, 1 PM | 1.00 | 14,000.00 | 9,100.00 | 9,100.00 |

Warranty Information. Applied Biosystems' product warranties are included with shipment of its products, or you may call Applied Biosystems for a copy of any product warranty. The warranty period for instruments begins on the earlier of the date of installation or ninety (90) days from the date of shipment for instruments installed by Applied Biosystems personnel. For instruments installed by the buyer or anyone other than Applied Biosystems, the warranty period begins on the date the instrument is delivered. Unless otherwise expressly indicated on Applied Biosystems' quotation, Applied Biosystems makes no warranty whatsoever in regard to products furnished by third parties. Such products are subject to the warranties, if any, of their respective manufacturers to the extent they are transferable or otherwise available to Applied Biosystems' customers.

Terms and Conditions. This quotation, including Applied Biosystems' General Terms and Conditions of Sale furnished with this quotation, and, if software is included, Applied Biosystems' applicable end user software license agreement, sets forth the terms on which Applied Biosystems is offering to sell the product(s) listed on this quotation. Applied Biosystems' end user license agreement for instrument operating software can be found on Applied Biosystems website, at: <http://www.appliedbiosystems.com/legal>. Licenses for stand alone software are in click wrap form. You may contact Applied Biosystems for a copy at any time. By issuing a purchase order or otherwise ordering the product(s), the customer expressly agrees to these General Terms and Conditions of Sale (and operating software end user software license agreement, if applicable) to the exclusion of all others not expressly agreed to in writing by an authorized representative of Applied Biosystems. If you have any questions, please call Applied Biosystems' Customer Account Services at 800-874-9868. Stenographical/clerical errors are subject to correction. Most recent quotation will supersede all prior quotations. All amounts are in USD.

Sales Representative: Ian Waldman

Prepared by: Juli Lee

ACCEPTANCE OF THIS QUOTATION IS LIMITED TO THE ATTACHED TERMS



Quotation

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Sales and Service
850 Lincoln Centre Drive
Foster City, CA 94404 U.S.A.
(800)874-9868; F(650)638-5875

PAGE 2 of 12

QUOTE NO.: 20627575
QUOTE VALID TO: 04/30/2010
QUOTE DATE: 01/12/2010

To: ERIC CUBILLO
STANISLAUS COUNTY

**Please reference Quote No.
when placing your orders.**

| Item | Part Number | Description | QTY | Unit List Price | Unit Net Price | Total Extended Price |
|---|-------------|-------------|-----|-----------------|----------------|----------------------|
| <p>AB Instrument Services for Diagnostics Plan Includes:</p> <ol style="list-style-type: none"> 1. Parts, labor and travel for remedial repair. 2. Two scheduled Instrument Operational Qualification/Performance Qualification (OQ/PQ) service visits at no additional cost to the customer during the plan period, as required (A). Any re-calibration and performance qualification after major repairs that occur during the plan period. Service does not include validation of assay for compliance of regulatory requirement as pertains to customer, customer's procedures, or use of device. The customer is responsible for any validation of assays, and compliance with any regulatory requirements that pertain to their procedures and uses of the instrument 3. No charge for annual planned maintenance visit(s). The number of planned maintenance visits scheduled during the plan period is indicated in AB's quotation. 4. Guaranteed priority response time of 2 business days after receipt of a service call for remedial repair of instruments located in AB's Service Zones 1 and 2. If AB fails to arrive at the instrument location within Zone 1 or Zone 2 within 2 business days for reasons other than customer's failure to provide access to AB or causes beyond the reasonable control of AB, AB will provide customer a service plan renewal credit in an amount equivalent to one day's pro-rated charge for each day AB's response is late. (See footnote (B) for call time cut off, other details, and terms and conditions.) 5. Target response time of 2 business days for remedial repairs outside of Zones 1 and 2. AB will use reasonable efforts to respond within 2 business days from receipt of a service call. 6. Priority telephone and email access to instrument technical support. 7. Telephone and email access to application technical support. 8. Instrument recalibration as required. <p><u>Important Notes and Footnotes</u> It is customer's responsibility to provide access to AB so AB may complete service, planned maintenance, Operational Qualification /Performance Qualification, and other service calls within the plan period. Calls not completed within a plan period will be cancelled unless AB failed to make reasonable efforts to complete the call within the plan period. (A) AB may perform more than the scheduled number of OQ/PQs at AB's sole discretion. Servicing does not include validation of assay for compliance with</p> | | | | | | |



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| 0003 | ZGD1-SC7500FASTDX | Svc, SC7500FASTDX, 1 OQ/PQ, 1PM | 1.00 | 10,000.00 | 0.00 | 0.00 |



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| | | <p>Estimated Shipping and Handling:</p> | | | | 560.00 |



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To place your Applied Biosystems order:

For INSTRUMENTS: Fax # 650-638-5875, Attn: Sales Administration

For CONSUMABLES: Fax #650-638-5998, Attn: Order Administration or phone 1-800-327-3002

-OR-

Visit us on the web at www.appliedbiosystems.com

AB Systems Financing (ABSF) can arrange competitive and flexible customer financing solutions for Applied Biosystems instruments, maintenance services and consumables.*

Please call us at 1-203-664-1537 to learn about how our ABSF program can meet your instrument financing needs.

* ABSF financing solutions are subject to credit approval and satisfactory documentation.

APPLIED BIOSYSTEMS GENERAL TERMS AND CONDITIONS OF SALE

These General Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from Applied Biosystems ("AB"), including installation of equipment, unless other terms are specifically designated by AB to apply to a specific product or service, or AB and buyer have entered into a master purchase agreement or other written agreement that expressly provides that its terms supersede and replace these Terms with respect to the products or services covered by the master purchase or other agreement (See Section 12, SOLE TERMS, INCONSISTENCIES, ORDER OF PRECEDENCE).

1. PRICE. The price for any product or service (hereinafter collectively "Product") shall be the price stated in AB's quotation to buyer for the Product ("AB's Quotation") or, if AB has not issued a quotation, AB's list price of the Product at the time AB receives buyer's purchase order. AB's quotations are valid for 30 days from the quotation date unless otherwise stated in AB's Quotation. If AB's price is stated by reference to a price list then the price shall be AB's list price in the jurisdiction in which the Product is to be delivered or performed in effect at the time AB receives buyer's purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments ("Taxes") and, unless otherwise stated in AB's Quotation, shipping and handling charges, freight and insurance. All Taxes related to Product shall be paid by buyer (other than taxes assessed against AB's net income), or in lieu thereof, buyer shall provide AB with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer may be billed as separate items on AB's invoice.

2. PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS. Payment terms are net 30 days from date of AB's invoice. If AB deems buyer to be or to have become uncreditworthy, AB shall have the right to require alternative payment terms, including without limitation sight draft, letter of credit, or payment in advance. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation, as reasonably determined by AB. If payment is not received by the due date, AB may assess and buyer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency or attorney to collect unpaid amounts, AB may invoice buyer for, and buyer will pay, all reasonable costs of collection, including without limitation reasonable attorneys fees. Buyer hereby grants to AB and AB reserves a purchase money security interest in all tangible Product purchased from AB, and in any proceeds thereof, for all amounts owing to AB for or related to such Product. Upon request by AB, buyer shall sign any reasonable documents required for AB to perfect such security interest and, to the fullest extent permitted by law, buyer hereby expressly grants AB authority and a limited power of attorney to file financing statements and amendments thereto for and on behalf of buyer for such Product and any proceeds thereof. Payment in full of all amounts owed for and related to such Product shall release such security interest in the Product and proceeds.

3. CREDIT TERMS. AB may, at any time and in its sole discretion, limit or cancel the credit of buyer as to time and amount, suspend shipments, demand payment in cash before delivery of Product, or demand other assurances of buyer's performance. If buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, AB may, without prejudice to any other right or remedy AB may have: (i) by notice to buyer, treat such failure or refusal as a repudiation by buyer of that portion of buyer's order not then fully performed, whereupon AB may cancel all further deliveries, and any amounts unpaid for non-cancelled Product shall immediately become due and payable; or (ii) make shipments under reservation of a security interest and demand payment against tender of title documents.

4. ACCEPTANCE OF ORDERS, DELIVERY, TITLE AND RISK OF LOSS, INSTALLATION. AB may accept or reject any buyer purchase order for Product in whole or in part. If a purchase order is accepted, AB will use reasonable efforts to ship tangible Product or perform services, including equipment installation if agreed to by AB, subject to the purchase order within a reasonable time after ordered, or, if a shipment, service commencement or installation date is indicated in AB's Quotation or otherwise agreed upon in writing by an authorized representative of AB, on or before such date. AB may make delivery in installments, and each installment shall be deemed to be a separate sale. AB may render a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Unless indicated otherwise in AB's Quotation, title and risk of loss with respect to all Products except Products that are software or services, and risk of loss with respect to software, shall pass from AB to buyer upon transfer of possession of the Product to a common or other third party carrier at AB's facility. If AB has undertaken to install a Product, it is buyer's responsibility, at buyer's cost, to have the installation site prepared and available for installation free of hazardous or unsafe conditions and, unless AB otherwise agrees, to move the Product, uncrated, from the buyer's delivery dock or receiving location to the table top or other place of installation. Buyer shall not assign AB personnel to work in biosafety level 3 or level 4 laboratories without prior written notice to AB and AB's consent.

5. CANCELLATION AND DEFERRAL. BUYER MAY NOT CANCEL ANY PURCHASE ORDER. However, unless otherwise stated in AB's Quotation, buyer may defer the shipment date one time for up to 60 days for instruments and other hardware, and up to 30 days for reagents, consumables and other tangible Product, by giving written notice to AB at least 30 days before the scheduled shipment date for instruments and other hardware, and at least 10 days before the scheduled shipment date for other Product.

6. REJECTION AND RETURN OF GOODS. Any claims for damaged, missing or defective Product must be reported in writing by buyer within 15 days from the date of buyer's receipt of the Product. In addition, buyer must promptly return a rejected Product to AB, C.O.D., unused and in a condition no worse than that delivered to buyer and in the Product's original containers and packing material, accompanied by a valid return authorization number obtained from AB. AB may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, AB, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. Shipping charges will not be credited. **THESE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** AB may require that buyer sign and deliver a properly completed certificate of decontamination prior to returning any Product.

7. LIMITED WARRANTY. AB makes only those warranties with respect to Product expressly identified as "warranties" and set forth in AB's current operating manual or catalog, or in a specific written warranty included with and covering Product, if any. Warranties are made only to the buyer purchasing the Product directly from AB, are not transferable and do not extend to the benefit of any other person or entity, unless otherwise expressly stated in writing by AB. **ANY PRODUCT NOT COVERED BY AN EXPRESS WRITTEN WARRANTY IS SOLD AND PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, STATUTORY, EXPRESS OR IMPLIED.** Any description of Product recited in AB's Quotation is for the sole purpose of identifying Product, and any such description is not part of any contract between AB and buyer and does not constitute a warranty that Product shall conform to that description. Any sample or model used in connection with AB's Quotation is for illustrative purposes only, and is not part of any contract between AB and buyer and does not constitute a warranty that Product will conform to the sample or model. No affirmation of fact or promise made by AB, whether or not in AB's Quotation, shall constitute a warranty that Product will conform to the affirmation or promise. Unless otherwise specified in

writing in documentation shipped with Product or otherwise agreed by AB in writing, AB does not provide service or support for custom products or other products made to buyer's specifications. **THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS PARAGRAPH ARE AB'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.**

8. INTELLECTUAL PROPERTY AND RELATED INDEMNITY.

8.1 BY AB. Subject to the restrictions set forth in this Section 8 and provided buyer complies with its obligations in this Section 8, AB agrees to defend buyer, and indemnify buyer from and against any infringement damages finally awarded, in any legal action or proceeding brought by a third party against buyer to the extent that such action is based on a claim that the manufacture and sale of a Product by AB infringes any United States or foreign patent, copyright, trademark or other intellectual property right of such third party if AB had actual knowledge of such intellectual property right and infringement at the time of delivery of the Product to buyer. Notwithstanding the foregoing, AB shall have no liability or obligation under this Section 8 with respect to any claim of infringement based upon: (i) modifications to any Product made by buyer or a third party; (ii) manufacture, assembly, labeling or branding of Product by AB pursuant to specifications or designs or requests for specific labeling or branding furnished by buyer. Notwithstanding anything herein to the contrary, AB shall have no indemnification obligations with respect to Product originating from a third party and provided under these Terms. Buyer's sole right to indemnification with respect to such third party Product shall be pursuant to the original manufacturer's or licensor's indemnification obligations, if any, to the extent provided by the original manufacturer or licensor.

8.1.1 Buyer's Obligations. Buyer must notify AB in writing of any claim for which it may seek defense and indemnity from AB hereunder promptly after becoming aware of such claim, make no admission of liability with respect to the claim, and cooperate with and provide reasonable assistance to AB, at AB's expense with respect to reasonable out of pocket expenses paid by buyer to third parties for such assistance, in the defense or settlement of such claim. AB shall have sole authority to defend and/or settle any claim under this Section 8. AB's obligations under this Section 8 are contingent upon buyer's compliance with all of the foregoing.

8.1.2 Remedy for Infringement, Rights of AB, Exceptions. If any Product or portion thereof is subject to a suit or other legal proceeding claiming that the Product or such portion infringes a third party's intellectual property right, or in AB's opinion is (are) likely to become subject of such a claim, AB shall, at its option, have the right to either: (a) procure for buyer the right to continue using the Product; or (b) modify the Product so that it becomes non-infringing; or (c) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality.

8.1.3 ENTIRE LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY OF AB, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY OR IN CONNECTION WITH ANY PRODUCT.

8.2 BY BUYER FOR BUYER'S MODIFICATIONS OR SPECIFICATIONS. If buyer modifies any Product or furnishes AB with specifications or designs or requests for specific labeling or branding, buyer agrees to defend, indemnify and hold AB harmless against all liabilities, damages, costs, expenses and claims arising from or based upon buyer's modifications or AB's manufacture and sale of Product or other performance in compliance with such specifications or designs or requests for labeling or branding.

9. COMPLIANCE WITH LAWS, USE OF PRODUCT, VALIDATION. Without limiting the generality of the paragraph above entitled "LIMITED WARRANTY," unless otherwise expressly stated in writing by AB, no claim or representation is made or intended (i) as to any clinical use of any Product (whether diagnostic, prognostic, therapeutic, blood banking or any other clinical use), (ii) that any Product has been cleared, approved, registered or otherwise qualified (collectively, "Approval") by AB with any regulatory agency for use in any clinical procedure or for other use requiring compliance with any federal, state, provincial, European or any other governmental agency or regulatory body regulating diagnostic, therapeutic, blood or other clinical products, medical devices or similar products (collectively, "Regulatory Laws"), (iii) that any Product will satisfy the requirements of any governmental body or other organization, including, but not limited to, the United States Food and Drug Administration or the International Organization for Standardization, or (iv) that any Product or its performance is suitable or has been validated for any specific use or application. Product should not be used for any purpose that would require Approval unless proper Approval is obtained, or, in the case of use in diagnostic laboratory systems and then only to the extent permitted by law, the laboratory has validated its complete system as required by the Clinical Laboratory Improvements Act of 1988, as amended, in the United States or equivalents in other countries. Buyer agrees that if it elects to use Product for a purpose that would subject buyer, its customers or any Product to the jurisdiction of Regulatory Laws or other applicable law, buyer shall be solely responsible for obtaining any required Approvals or other approvals and otherwise ensuring that its use of any Product complies with such laws. Unless otherwise expressly stated in writing, Products have not been tested by or for AB for any particular use or purpose, or for safety or efficacy. Buyer agrees that it is buyer's responsibility, and not AB's, to validate the performance of Products for any specific use or application and to ensure that Products meet applicable regulatory, certification, validation or its other requirements, since the use and performance characteristics of Products have not been validated by AB for any specific use or application, except as may be otherwise expressly set forth by AB in writing. Product should be used in strict accordance with applicable instructions, warnings and other information in user manuals and other Product documentation.

10. FORCE MAJEURE. AB shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond AB's reasonable control, including, but not limited to, flood, fire, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure, unusually severe weather, earthquake or other act of God, power loss or reduction, strike, lock-out, boycott or other labor disputes of any kind (whether relating to its own employees or others), embargo, governmental regulation or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, AB shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and AB shall also have the right, to the extent necessary in AB's reasonable judgment, to apportion Product then available for delivery fairly among its various customers in such manner as AB may consider equitable.

11. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL AB BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL

DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, AB'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, AB'S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY AB OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT AB IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.

12. SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE. These Terms, together with AB's Quotation, any applicable label license or patent statement or other written conditions of use, any other terms and conditions expressly agreed to in writing by an authorized representative of AB "(collectively, "AB's, Terms"), and buyer's statement on its purchase order (if accepted by AB) of the name or identity of the Product(s) purchased, quantity, delivery date, bill to and ship to address and, if accurate, price (and only such information on buyer's purchase order), constitute the complete, exclusive and entire agreement between AB and buyer with respect to purchases of Product (unless other terms and conditions are expressly designated to be applicable by AB in writing), and AB's offer to sell Product is expressly limited to such terms. Such terms shall take precedence over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument for or regarding the purchase of Product, whether or not in response to an AB Quotation, shall be deemed acceptance of and agreement to AB's Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order (except the name or identity of products purchased, quantity, delivery date, bill to and ship to address and, if accurate, price) or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in buyer's purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of buyer is expressly conditioned on buyer's assent to and acceptance of AB's Terms to the extent they are additional or different terms from those of buyer's offer. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on AB's Quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.

13. NO IMPLIED RIGHTS. Nothing in these Terms shall be deemed or construed (i) as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise; (ii) to limit AB's rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any Product beyond that granted under any patent or other intellectual property label license or statement applicable to the Product; (iii) as granting buyer any right to be supplied with any Product or component thereof beyond those ordered by buyer and supplied by AB in accordance with these Terms; or (iv) as a license or grant of any right to buyer to manufacture or to have manufactured any Product.

14. CHOICE OF LAW. Any contract between AB and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, U.S.A., excluding both its choice of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

15. EXPORT CONTROLS. Buyer agrees that it will not export or transfer Product for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

16. MISCELLANEOUS. No amendment of AB's Quotation or these Terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and buyer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of these Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.

17. ADDITIONAL TERMS AND CONDITIONS OF SALE FOR OLIGONUCLEOTIDE PRODUCTS, INCLUDING SPECIAL TERMS TO PROTECT CUSTOMER CONFIDENTIAL INFORMATION. THE FOLLOWING TERMS AND CONDITIONS OF SALE FOR PRODUCTS THAT ARE OLIGONUCLEOTIDE PRODUCTS, IN ADDITION TO ALL OF THE TERMS AND CONDITIONS OF SALE SET FORTH ABOVE, APPLY TO THE PURCHASE AND SALE OF ALL APPLIED BIOSYSTEMS OLIGONUCLEOTIDE PRODUCTS, INCLUDING TAQMAN® ASSAYS, TAQMAN® LOW DENSITY ARRAYS AND CUSTOM OLIGONUCLEOTIDE SYNTHESIS PRODUCTS.

17.1 DEFINITIONS. The following definitions apply to these Additional Terms and Conditions of Sale for Oligonucleotide Products.

"Confidential Information of Buyer" means each Nucleic Acid Sequence specified by buyer in writing to AB that is intended to be detected by use of a Custom Product or to be included in primers and probes or other oligonucleotide Products manufactured by AB and sold to buyer, and the facts that buyer placed orders for Products containing or intended to detect such sequence and that buyer ordered oligonucleotide Products from AB containing or intending to detect such sequence.

"Custom Product" means (i) an Oligonucleotide Kit that is intended to detect a Nucleic Acid Sequence specified by buyer, or (ii) primers and probes or any other oligonucleotide Product that includes a Nucleic Acid Sequence, or other non-off-the-shelf elements or features, specified by buyer.

"Nucleic Acid Sequence" means the nucleic acid sequence of a genome intended to be detected by use of an Oligonucleotide Kit or that is specified as being included in other oligonucleotide Products.

"Oligonucleotide Kit" means a Product that consists of a combination of reagents and other products that includes at least one oligonucleotide based primer or probe, that is sold by AB as an assay kit, and the use of which is intended to detect at least one specific nucleic acid sequence in a sample.

"Synthesis" means the design (where applicable) or manufacture by AB of Custom Kits or other oligonucleotide Products for delivery to buyer.

17.2 AB'S EVALUATION OF CUSTOM KIT ORDERS. AB may decline the Synthesis, at any stage of the Synthesis process, of any Custom Product ordered by buyer that AB deems to be unsuitable or commercially impractical for Synthesis, whether on technological, cost or other grounds. AB will give written notice to buyer within a reasonable time following its determination to decline Synthesis of a Custom Product. Buyer shall have no obligation to pay any fees for time and materials, or for any other expenses incurred by AB, in connection with any declined Custom Product. All Custom Product orders not declined by AB must be paid for by buyer, and orders may not be cancelled or changed by buyer without the written consent of AB. Buyer understands and agrees that buyer's obligation to pay for all Custom Products that AB proceeds to Synthesize and deliver is firm and irrevocable, regardless of the number of Custom Products declined for

Synthesis in a given order. Each purchase order for Custom Products must be for the total amount payable for all Custom Products ordered. The amount corresponding to the charges applicable to declined Synthesis will be reflected in AB's invoice for the order.

17.3 BUYER'S REPRESENTATIONS. By submitting an order, buyer represents, warrants and agrees that

- (i) buyer will provide AB with all information known to buyer regarding biological, radiological, and chemical hazards associated with the handling, transport, exposure to or other use of any materials supplied to AB by buyer;
- (ii) buyer has the right to cause the sequences that buyer has requested AB to manufacture to be manufactured by AB and sold to buyer, that such sequences and the manufacture and sale thereof to buyer will not infringe or result from the misappropriation of the intellectual property rights, including without limitation patent, copyright, trademark and trade secrets, of any third party anywhere in the world (provided that the foregoing shall not be deemed a representation or warranty with respect to methods of manufacture employed by AB), and that the materials buyer furnishes to AB will not infringe or result from the misappropriation of any such intellectual property rights; and
- (iii) the oligonucleotide Products and components thereof sold to buyer shall be for buyer's own internal research and development use only and shall not be resold or otherwise transferred or conveyed to any third party without the prior express written consent of AB.

17.4 CONFIDENTIAL INFORMATION OF BUYER. AB agrees that for seven (7) years after the disclosure by buyer to AB of Confidential Information of Buyer, AB shall not disclose such Confidential Information of Buyer to any third party and will use at least the same degree of care as it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care, to prevent the disclosure of such Confidential Information of Buyer to any third party. This undertaking of confidentiality shall not apply to, and AB shall have no obligations under this paragraph with respect to, any Confidential Information of Buyer that (a) was in AB's possession before receipt from buyer, (b) is or becomes a matter of public knowledge or part of the public domain through no fault of AB, (c) is rightfully received by AB from a third party that was not obliged to keep such information confidential, (d) is developed by AB without reference to Confidential Information of Buyer, or (e) is disclosed by AB with buyer's prior written approval. Notwithstanding the foregoing, AB may disclose Confidential Information of Buyer to the extent required to comply with governmental regulations and other applicable laws or to respond to subpoena or other compulsory legal process, provided in all cases that AB takes reasonable and lawful actions to avoid or minimize the extent of such disclosure and notifies buyer in writing as far in advance of the date of disclosure as is reasonably feasible so that buyer to the extent feasible will have an opportunity to seek to prevent or limit disclosure.

17.5 INTELLECTUAL PROPERTY RIGHTS. Any inventions (patentable or otherwise), discoveries, developments, improvements, information, data, compounds, formulae, know-how or other results that are conceived, developed, discovered, reduced to practice, or generated by or for AB or jointly by buyer and AB and that relate or apply to the processes and methods used in or related to the Synthesis of oligonucleotide Products or otherwise in connection with designing or manufacturing oligonucleotide Products, including without limitation primers and probes, shall be and remain the sole and exclusive intellectual property of AB, and buyer hereby transfers and assigns all of its right, title and interest in and to any such joint intellectual property to AB. Buyer will take reasonable steps, upon the request and at the expense of AB, to assist AB to secure, evidence and record AB's rights in such intellectual property.

18. AMERICAN RECOVERY & REINVESTMENT ACT. Applied Biosystems is eligible to receive orders funded by the American Recovery & Reinvestment Act (ARRA). If you are a U.S. Government customer, please call 866-934-5977 in order to place any order funded by ARRA or email ARRAN@appliedbiosystems.com

APPLIED BIOSYSTEMS PERFORMANCE AGREEMENT TERMS AND CONDITIONS

1. These Performance Agreement Terms and Conditions shall govern all orders for and purchases from Applied Biosystems (herein called "AB") of Performance Plans and other agreements for services relating to instruments and other equipment, including the maintenance, repair, installation, relocation or servicing of instruments and other equipment, and sets forth the agreement between AB and its customer regarding the performance of such services, unless other terms are specifically designated by AB to apply to a specific service (See Section 20 below).
2. Services under all Performance Plans of AB are provided during normal working hours (Monday through Friday, 8:00 AM to 5:00 PM, excluding holidays). Planned maintenance ("Planned Maintenance") will be performed in accordance with AB's Planned Maintenance procedures and checklist for the instrument or component being serviced.
3. The decision to repair or replace any parts of the instrument will be made by AB on the basis of which approach will provide the Customer with the best service. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of AB.
4. AB will use reasonable efforts under the circumstances to provide service as quickly as possible. The service will be scheduled at a time mutually agreed upon by AB and the Customer.
5. AB warrants that it will provide its services at least in accordance with generally accepted standards prevailing in the instrument repair industry at the time and place performed. Warranty claims must be made within ninety (90) days after services are performed. **AB MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY WITH RESPECT TO ITS SERVICES, WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED. AB'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF WARRANTY IS RE-PERFORMANCE OF THE SERVICES WITHIN A REASONABLE TIME OR RETURN OF THE FEE PAID FOR THE DEFECTIVE SERVICES AT AB OPTION. THESE ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.**
6. This Performance Agreement does not cover replacement of parts, costs, repairs or adjustments due to Year 2000 non compliance or for defects caused by or repairs necessitated by acts of nature, misuse, carelessness or unauthorized changes to the instrument made by the Customer, Customer's employees, agents or an unauthorized contractor. This Performance Agreement also does not require AB to repair or replace parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances.
7. This Performance Agreement does not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications).
8. Payment terms are net 30 days from date of AB's invoice to customer. If payment is not received by the due date, AB may assess and customer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If AB retains a collection agency and/or attorney to collect unpaid amounts, AB may invoice customer for, and customer will pay, all costs of collection, including without limitation reasonable attorneys fees.
9. The initial term of this Performance Agreement is one year commencing on the date designated by Applied Biosystems in its quotation or otherwise specified to Customer. This Performance Agreement may be terminated by either party upon at least thirty (30) days written notice to the other party. Termination will be effective thirty (30) days after the receipt of such notice, or at a later date if one is so specified in the notice ("Termination Date"). Termination cannot be made effective prior to thirty (30) days after notice is received. AB will cease performance under this Performance Agreement on the Termination Date unless the Customer specifies a separate, earlier date in writing ("Cessation Date"). In that event, AB will cease performance under this Performance Agreement on such Cessation Date.
10. In the event of termination of this Performance Agreement under Section 9, AB shall calculate at its sole discretion the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered equipment under this from its effective date until the Termination Date. The Customer's total payment obligation to AB under this Agreement shall equal (1) the amount so calculated or (2) the prorated price of this Agreement from its effective date until the Termination Date, whichever is greater, plus ten percent (10%) of the total fee paid for this Performance Agreement, not to exceed the total amount paid. Any payments made by Customer to AB in excess of this amount shall be credited to the Customer's account within thirty (30) days after the Termination Date toward future purchases of AB instruments, consumables or Performance Plans. Any unpaid portion of this amount shall be immediately due upon Customer's receipt of an invoice from AB. If a Performance Plan is terminated early in connection with the trade in of a used AB instrument for a new AB instrument, the credit may be applied toward purchase of a Performance Agreement for the new instrument. Contact your AB service representative for details. No cash refunds will be made on account of the early termination of any Performance Plan or other agreement for services.
11. AB will indemnify and hold Customer harmless from and against any and all claims for injury or death of persons, or damage to tangible property, occurring while AB personnel are on Customer's premises performing services pursuant to this Agreement to the extent caused by the negligent acts or negligent omissions of AB, provided AB is given prompt notice of any such claim and the opportunity to control the defense and settlement of same.
12. **IN NO EVENT SHALL AB BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM SERVICES OR OTHERWISE, EVEN IF AB IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND IN NO EVENT SHALL AB BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT FAILURE WITHOUT LIMITING THE FOREGOING, EXCEPT SOLELY FOR ANY PAYMENTS MADE UNDER AB'S INDEMNITY SET FORTH IN SECTION 11, AB TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS PERFORMANCE AGREEMENT AND SERVICES RENDERED, IN CONTRACT, TORT, WARRANTY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO AB PURSUANT TO THIS AGREEMENT.**
13. Parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by this Performance Agreement, including, but not limited to seals, filters, gaskets, etc.
14. Use of any non-AB's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by AB to have caused instrument failure will require remedial repairs of the effected parts to be completed outside the Performance Agreement at AB's then prevailing rates for billable service.
15. Ancillary equipment not manufactured by AB and deemed by AB as non-integral to the system or the operation of the instrument may be excluded from this Performance Agreement.
16. AB makes no representation whatsoever that services under this Agreement satisfy or will satisfy any requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug

Administration or the International Organization for Standardization. Customer agrees that it is the Customer's responsibility to ensure that such services are adequate to meet its regulation/certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the United States Food and Drug Administration or the International Organization for Standardization are the responsibility of Customer.

17. This Performance Agreement is not assignable or otherwise transferable by Customer. Any assignment or transfer or attempt to assign or to transfer the Performance Agreement by Customer shall be void.
18. AB may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable safe and secure location, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced pursuant to this Performance Agreement will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the service technician will not be exposed to any such materials.
19. Performance Plans do not include customer training or services related to the relocation of instruments unless otherwise specifically stated in writing by AB in any particular case.
20. This Performance Agreement, together with AB's quotation regarding the Performance Plan or other services subject to these terms and conditions (collectively, "AB's Terms"), represents the entire agreement between the parties and supersedes and entirely replaces (i) any previous agreements between the parties with respect to the subject matter herein and (ii) any pre-printed, standard or other terms set forth in customer purchase order or any other document not signed by an authorized representative of AB, which are hereby rejected and shall be void. Customer's submission of a purchase order or other instrument regarding the purchase of a Performance Plan in response to AB's quotation or any other AB document that includes or incorporates these shall be deemed acceptance of these terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in such purchase order or other instrument or elsewhere. Any acceptance by AB of any offer of customer is expressly conditioned on customer's assent to and acceptance of AB's Terms to the extent they are additional or different terms. Except as otherwise provided in these terms, in the event of an inconsistency between these terms and the terms appearing on AB's quotation or other agreement signed by an authorized representative of AB, the terms appearing on AB's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these terms, and all other provisions of these terms shall remain in full force and effect.
21. No amendment of these terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both AB and customer. AB's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these terms for any other purpose. If any provision of these terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect. No additions or modifications to this Performance Agreement shall be valid unless specifically agreed to in writing by both parties. This Performance Agreement shall be governed by the laws of the State of California, exclusive of its conflict of laws rules.

Amendment to Quote 20637001

Applied Biosystems General Terms and Conditions of Sale

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2. Payment Terms

Strike all after, "Payment Terms are net 30 days from date of AB's invoice."

3. Credit Terms

Strike entire article

6. Rejection and Return of Goods

Add:

"Stanislaus County Health Services Agency ("HSA") will receive the product and store in the products original crate or other packing. Applied Biosystems' representative will uncrate and remove any other packaging at the time of installation."

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8 Intellectual Property and Related Indemnity

8.1 By AB

Add:

The Applied Biosystems 7500 Fast Dx Real-Time PCR Instrument with the SDS Software version 1.4 is a real-time nucleic acid amplification and detection system that measures nucleic acid signals from reverse transcribed RNA and converts them to comparative quantitative readouts using fluorescent detection of dual-labeled hydrolysis probes. The 7500 Fast Dx is to be used only by technologists trained in laboratory techniques, procedures and on use of the Analyzer.

Stanislaus County Health Lab is solely responsible for complying with any and all applicable laws and regulations for product use other than those expressed above.

8.1.2

To read:

8.1.2 Remedy for Infringement, Rights of AB, Exceptions. If any Product or portion thereof is subject to a suit or other legal proceeding claiming that the Product or such portion infringes a third party's intellectual property right, or in AB's opinion is (are) likely to become subject of such a claim, AB shall, have the right to procure for buyer the right to continue using the Product; **or upon mutual consent of the parties** (a) modify the Product so that it becomes non-infringing; or (b) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality.

9. Compliance with Laws

The Applied Biosystems 7500 Fast Dx Real-Time PCR Instrument with the SDS Software version 1.4 is a real-time nucleic acid amplification and detection system that measures nucleic acid signals from reverse transcribed RNA and converts them to comparative quantitative readouts using fluorescent detection of dual-labeled hydrolysis probes. The 7500 Fast Dx is to be used only by technologists trained in laboratory techniques, procedures and on use of the Analyzer.

Stanislaus County Health Lab is solely responsible for complying with any and all applicable laws and regulations for product use other than those expressed above.

Applied Biosystems Performance Agreement Terms and Conditions

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8. To read:

Payment terms are net 30 days from date of AB's invoice to customer. Strike all remaining sentences.

Add to entire agreement – Insurance requirements of HSA:

a)a) AB shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

i)i) General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by AB under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

ii)ii) Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, AB certifies under section 1861 of the Labor Code that AB is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that AB will comply with such provisions before commencing the performance of the work of this Agreement.

b)b) Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by buyer. At the option of buyer, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) AB shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to buyer guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. Buyer, in its sole discretion, may waive the

requirement to reduce or eliminate deductibles or self-insured retentions, in which case, AB agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of AB's defense and indemnification obligations as set forth in this Agreement.

c)c) AB shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming buyer and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of AB, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of Us; and (c) premises owned, occupied or used by AB. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against buyer and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by AB.

d)d) AB's insurance coverage shall be primary insurance regarding buyer and buyer's officers, officials and employees. Any insurance or self-insurance maintained by buyer or buyer's officers, officials and employees shall be excess of AB's insurance and shall not contribute with AB's insurance.

e)e) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to buyer or its officers, officials, employees or volunteers.

f)f) AB's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

g)g) Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to buyer. AB shall promptly notify, or cause the insurance carrier to promptly notify, buyer of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

h)h) Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to t buyer; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-:VII shall be acceptable to buyer; lesser ratings must be approved in writing by buyer.

i)i) We shall require that all AB's subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

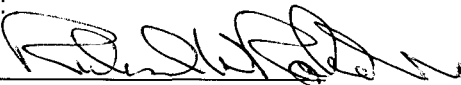
j)) At least ten (10) days prior to the date begin performance of AB's obligations under this Agreement, AB shall furnish buyer with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for AB's subcontractors. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in buyer's sole and absolute discretion, approved by buyer. Buyer reserves the right to require complete copies of all required insurance policies and endorsements, at any time.


k) The limits of insurance described herein shall not limit the liability of AB and AB'S officers, employees, agents, representatives or subcontractors.

Add
Inclusion of Business Associate Exhibit – Exhibit B

Stanislaus County
For the benefit of its Health Services
Agency, Public Health Division

Applied Biosystems LLC

By: 
Signature
Richard W. Robinson
Name
3/6/2010
Date

By: 
Signature
Bellem Neumann
Name
3/29/2010
Date

APPROVED AS TO CONTENT:
HEALTH SERVICES AGENCY

By: 
Mary Ann Lee, Managing Director

APPROVED AS TO FORM:
John P. Doering, County Counsel.

By: 
Dean Wright, Deputy County Counsel

BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply, to the extent required by law, with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (including but not limited to Title 42, U.S.C. Section 1320d et seq.) and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (CFR), Parts 142, 160, 162 and 164), hereinafter collectively referred to as the "Privacy Rule and Security Standards."

If COUNTY becomes aware of a pattern of activity that violates the HIPAA Privacy Rule, and reasonable steps to cure the violation are unsuccessful, the COUNTY may terminate the Agreement, or if not feasible; report the problem to the Secretary of the US Department of Health and Human Services.

COUNTY and BA desire to facilitate the billing and/or transfer of protected health information (PHI), as defined in 45 CFR, Section 164.504, by electronically transmitting and receiving data in agreed formats and to assure that such transactions comply with relevant laws and regulations.

1. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms used in the Privacy Rule.

- 1.1 **"Business Associate" (BA)** shall mean CONTRACTOR as identified in this Agreement.
- 1.2 **"Covered Entity"** shall mean Stanislaus County, Health Services Agency (COUNTY).
- 1.3 **"Individual"** shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 1.4 **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.5 **"Protected Health Information" (PHI)** shall have the same meaning as the term "protected health information" in 45 CFR, Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.6 **"Security Rule"** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, Subpart C.
- 1.7 **"Physical Safeguards"** are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 1.8 **"Security or Security measures"** encompass all of the administrative, physical, and technical safeguards in an information system.
- 1.9 **"Security incident"** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Operations

2.1 **Document Standards.** Each party may transmit to, or receive from, the other party, either electronically or using other media, PHI and/or individually identifiable health information, as defined in 42 U.S.C., Section 1320d, as it pertains to the provision of services under this Agreement. All documents shall be transmitted in accordance with the standards set forth in the Health Services Agency's Privacy Policy.

2.2 **System Operations.** Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing necessary to effectively, reliably, and confidentially transmit and receive documents.

3. Electronic Transmissions

Documents shall not be deemed to have been properly received, and no document shall give rise to any obligation, until decrypted and accessible to the receiving party at such party's receipt counter as designated by regulation or policy.

4. Security Standards

4.1 BA shall ensure the implementation of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits.

4.2 BA shall ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards;

4.3 BA is required to report to the covered entity any security incident of which it becomes aware.

4.4 BA shall make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary for purposes of determining the covered entity's compliance with the regulations.

4.5 Covered entity may terminate the contract if the covered entity determines that the BA has violated a material term of the contract.

5. Use and Disclosure of Protected Health Information

5.1 Except as otherwise provided in this Business Associate Exhibit, BA may use or disclose PHI to perform functions, activities or services for or on behalf of the COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the COUNTY or the minimum necessary policies and procedures of the COUNTY.

5.2 Except as otherwise limited in this Business Associate Exhibit, BA may use and disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

5.3 Except as otherwise limited in this Business Associate Exhibit, BA may use PHI to provide data aggregation services related to the health care operation of COUNTY.

5.4 BA shall not use or further disclose PHI other than as permitted or required by this Business Associate Exhibit, or by law.

5.5 BA will promptly report, in writing, to COUNTY any use or disclosure of a PHI not provided for by this Exhibit within seven (7) days of the time BA becomes aware of such use or disclosure, pursuant to 45 CFR, Section 164.528.

5.6 BA shall document such disclosure of PHI and information related to such disclosures as would be required for the COUNTY to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

5.7 BA shall provide to COUNTY or an individual, within seven (7) days, information collected in accordance with Title 45, CFR, Section 164.528, to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

6. Agents and Subcontractors of BA

BA shall ensure that any agent, including subcontractor, to which the BA provides PHI received from, or created or received by BA on behalf of the COUNTY, shall comply with the same restrictions and conditions that apply through this Business Associate Exhibit to the BA with respect to such information.

7. Access to PHI

7.1 BA shall provide access, within seven (7) days of such a request, to the COUNTY or, as directed by the COUNTY, to PHI in a designated record set to an individual in order to meet the requirements of Title 45, CFR, Section 164.524.

7.2 BA shall, within seven (7) days of such a request, provide individual patient or their legal representative with access to PHI contained in BA's records, pursuant to 45 CFR, Section 164.504 (e)(2)(F).

8. Amendment(s) to PHI

BA shall make any amendment(s) to PHI in a designated record set that the COUNTY directs or at the request of the COUNTY or an individual within seven (7) days of such request in accordance with Title 45, CFR, Section 164.526.

9. Records Available

BA shall make its internal practices, books, and records related to the use, disclosure, and privacy protection of PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY, available to the COUNTY or to the Secretary of HHS for purposes of the Secretary determining compliance with the Privacy Rule, in a time and manner designed by the COUNTY or the Secretary of HHS.

10. Retention, Transfer and Destruction of Information

10.1 Upon termination of this Agreement for any reason, BA shall retain all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY in a manner that complies with the Privacy Rule. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.2 Prior to termination of this Agreement, the BA may be required by the COUNTY to provide copies of PHI to the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.3 When the retention requirements on termination of the Agreement have been met, BA shall destroy all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA. BA, its agents or subcontractors shall retain no copies of the PHI.

10.4 In the event that BA determines that returning or destroying the PHI is not feasible, BA shall provide the COUNTY notification of the conditions that make destruction infeasible. Upon mutual agreement of the parties that the destruction of the PHI is not feasible, BA shall extend the protections of this Business Associate Exhibit to such PHI and limit further use and disclosures of such PHI for so long as BA, or any of its agents or subcontractors, maintains such PHI.

11. Force Majeure

No party shall be liable for any failure to perform its obligations in connection with any transaction or any document where such failure results from any act of nature or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) that prevent such party from transmitting or receiving any documents.

12. Limitation of Damages

Other than specified in elsewhere, neither party shall be liable to the other for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

13. Attorney-Client Privilege

Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by BA or COUNTY by virtue of this Subparagraph.

14. Interpretation

Any ambiguity in this Business Associate Exhibit shall be resolved to permit the COUNTY to comply with the Privacy Rule and Security Standards.

ARNOLD SCHWARZENEGGER
GOVERNOR

MATTHEW R. BETTENHAUSEN
SECRETARY



3650 SCHRIEVER AVENUE
MATHER, CA 95655

PHONE (916) 845-8510
FAX (916) 324-5902

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY
GRANTS MANAGEMENT DIVISION**

March 17, 2010

STANISLAUS CO.

MAR 25 2010

OES/FIRE WARDEN

Ms. Deborah Thrasher
Stanislaus County
3705 Oakdale Rd
Modesto, CA 95357

Dear Ms. Thrasher:

**SUBJECT: APPROVAL OF SOLE SOURCE CONTRACT REQUEST
FY09 STATE HOMELAND SECURITY GRANT PROGRAM (SHSGP)
Grant #2009-0019, OES ID #099-00000**

The California Emergency Management Agency (CalEMA) has received, reviewed, and approved Stanislaus County's three Sole Source contract requests dated March 3rd, 2010 based on the information your office provided regarding the proposed purchase of a MagNA Pure LC by Roche, an ABI 7500 Fast DX by Applied Biosystems, and a QIAcube by Qiagen by Stanislaus County.

If you have any questions about this letter, please contact your Program Representative, Casey Granados, at 916-322-2643 or Casey.Granados@ohs.ca.gov.

Thank you for your work in protecting California. We look forward to your continued collaboration towards our homeland security strategy and appreciate your cooperation and support.

Sincerely,

A handwritten signature in cursive script that reads "Ursula Harelson".

Ursula Harelson
Program Manager, HSGP Unit

QIAGEN
Terms and Conditions for Product Sales

1. **Contract Term.** The term of this agreement shall commence on the Effective Date and continue for the period of time indicated on the attached quote (hereinafter the "Cover Document"). The Effective date of this agreement is the date on which it is signed by the last signatory hereto.
2. **Orders.** Customer shall place orders for Products (all equipment, consumables, kits and supplies) using purchase orders consistent with the Cover Document to which these terms and conditions are attached. Upon receipt of the Customer's purchase order, the Products will be invoiced to the Customer according to the Cover Document plus the addition of applicable taxes, handling fees, and shipping charges. All orders shall include the minimum following information: shipping and billing address, catalog number, product description, size, quantity and purchase order number. In the event Customer's purchase order varies from the terms herein, the terms herein shall control, even if Customer's purchase order states otherwise.
3. **Quantities.** If a quantity requirement is indicated on the Cover Document, and Customer fails to order and pay for the required quantity of Products, and such failure continues for two months, or quarters (depending on the frequency of Product shipments set forth herein), QIAGEN reserves the right to either adjust the Product pricing set forth herein or to declare Customer in default under, and terminate this Agreement. Prior to any such termination, QIAGEN shall provide the Customer with notice of such deficiency and the opportunity to cure the deficiency within the next thirty (30) days. If QIAGEN elects to continue this Agreement, the adjusted Product pricing shall equal QIAGEN's list prices then in effect, unless the parties negotiate a different pricing schedule.
4. **Pricing.** Prices included in this Agreement for Products shall remain firm for the remainder of the calendar year during which this agreement is signed **not to exceed 2% annually each year thereafter**. Thereafter, prices will be adapted according to standard list price adjustment for each year. Prices for Products are also subject to compliance with the Product commitments set forth herein.
5. **Title; Risk of Loss; Shipping.** All Products are shipped FCA QIAGEN's facility, with shipping and handling fees prepaid and added to the invoice amount. Title to and risk of loss of Products shall pass to Customer at the place and time QIAGEN delivers such Products to the shipper. QIAGEN may change freight carriers without notice. If a shipment fails to be delivered as scheduled, Customer shall be responsible for pursuing a claim with the freight company and QIAGEN shall provide reasonable cooperation with such endeavor.
6. **Payment Terms.** Customer shall pay invoices within 30 days of invoice date. QIAGEN reserves the right to change the terms of payment or to require payment at or prior to delivery if, in QIAGEN's opinion, Customer's financial condition is deemed to be at risk, Customer fails to pay any amounts due QIAGEN, or other circumstances that so warrant.
7. **Taxes.** Taxes will be based on shipment destination and any applicable local/state taxes are the responsibility of Customer. In those states where QIAGEN collects local/state sales taxes, QIAGEN will add such taxes to the invoices and remit to the appropriate taxing authority. If Customer is a not-for-profit corporation or otherwise exempt from the payment of Federal, state or local excise, sales or use taxes, Customer shall provide QIAGEN with written notice of such exempt status with purchase order and QIAGEN shall reflect such exemptions in its invoice(s). Customer will provide QIAGEN with tax exemption numbers and certificates prior to first order.
8. **Product Warranty.** QIAGEN warrants that, at the time of shipment, the Products sold by it are free from defects in materials and workmanship and conform to the Specifications, if any, that accompany the Products. QIAGEN agrees to replace any defective or non-conforming Product (provided that such nonconformity was not caused by misuse or negligence of Customer) if Customer provides notice to QIAGEN within thirty (30) days after receipt. No claim will be honored if Customer fails to notify QIAGEN within the period specified. Such replacement, or the refund of the invoice price of the Products, shall be the sole and exclusive remedy of Customer for any liability of QIAGEN of any kind, including, but not limited to, liability based upon warranty (expressed or implied, whether contained herein or elsewhere), strict liability, contract or otherwise. All third party expenses, including any applicable transportation, handling, customs and related costs associated with the return and/or replacement of such Products or Supplies, if determined to be nonconforming, shall be paid by QIAGEN.
9. **Equipment Warranty.** QIAGEN warrants that, at the time of shipment, Equipment will conform to QIAGEN's published specifications in effect at the time of order acceptance. Promptly upon receipt, Customer shall examine equipment for any defects, damage or shortage. All claims shall be deemed waived unless made in writing and received by QIAGEN by (a) 14 days after Customer's receipt of Equipment, in the case of any non-conformities or deficiencies reasonably ascertainable by visual inspection or routine testing procedures, (b) 30 days after Customer learns of the facts giving rise to the claim, in the case of any other non-conformities or deficiencies not reasonably ascertainable by visual inspection or routine testing procedures, or (c) 60 days after Customer's receipt of such shipment. Customer's failure to give notice of any claim within the applicable time period specified above, shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing or use of the reagents or instrumentation shall have then taken place.

___ Customer's Initials

QIAGEN
Terms and Conditions for Product Sales

10. **Returns.** Customer must obtain authorization for all returns of Products from a QIAGEN Customer Relations or Technical Services Representative. A Returned Good Authorization number shall be assigned and must be included in the shipping documentation. Some products may not be eligible for return due to regulatory or storage requirements.
- a. Returns due to Nonconforming Product. If Customer chooses to return nonconforming (*i.e.*, does not conform to Specifications) Products under the Product Warranty, QIAGEN will assess the Product to verify the nonconformance. If the Product is found to be non-conforming, QIAGEN shall send a replacement within 48 hours for all stocked items. If Customer is asked by QIAGEN to return the nonconforming Product, QIAGEN will pay for the return shipping charges as well.
 - b. Returns due to Customer Ordering Error. Products ordered in error are returnable within thirty (30) days after shipment was started by QIAGEN; provided that the Products being returned remain unopened and suitable for resale, as determined by QIAGEN in its sole discretion. Customer must pay for the return freight. A credit shall be issued for the invoice price of the returned Product less (1) a restocking fee of the greater of 20% of the return value or \$25.00 and (2) freight costs incurred by QIAGEN for the shipment to and/or from Customer. Special orders, non-stocked items, and discontinued reagents may not be returned.
11. **Notices.** All notices that may be required pursuant to this Agreement shall be addressed to the party at the respective address set forth on the Purchase Schedule, and with respect to QIAGEN to the attention of the QIAGEN Legal Department, 1201 Clopper Road, Gaithersburg, MD 20878, or to such other address as either party may so designate from time to time. Notices shall be mailed, postage-prepaid, by first class mail, delivered by hand, or transmitted by a nationally recognized overnight delivery service.
12. **Indemnification.** Customer shall indemnify QIAGEN, defend and assume the settlement of, and the defense of any suit or suits or other legal proceedings brought to enforce all losses, damages, injuries, claims, demands, and expenses ("Liability") arising out of the use of Products purchased by Customer hereunder, regardless of where, how, and by whom used, and shall pay all judgments entered in any such suit or suits or other legal proceedings, except for Liability resulting from QIAGEN's gross negligence or willful misconduct. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding termination of this Agreement, whether by expiration of time, by operation of law, or otherwise.
13. **General Compliance.** Each of the parties represents and warrants to the other party that it will comply with all applicable laws, rules or regulations ("Applicable Laws"), including, but not limited to, applicable federal, state and local laws, rules, regulations and guidelines relating to the manufacturing, quality control, packaging, labeling, handling, shipping, importation, exportation and storage of Products, HIPAA, Medicare and Medicaid billing and referral requirements and the Federal Food, Drug and Cosmetic Act. It is the intention of the parties that this Agreement be administered in accordance with the federal anti-kickback statute (Title 42, United States Code, Section 1320a-7b(b)). Accordingly, insofar as required by such statute or by the discount safe harbor regulations at 42 CFR § 1001.952(h), Customer shall fully and accurately report in applicable cost reports and provide information upon request to Medicare, Medicaid and other federal health care programs on all discounts and price reductions under this Agreement.
14. **HIPAA Compliance.** The parties acknowledge that use of the Products and Equipment by Customer may be subject to the requirements of HIPAA and the related privacy and security regulations, and other current and future laws, rules and regulations regarding collecting, accessing, using, disclosing, electronically transmitting, securing, and storing individually identifiable health information of patients ("PHI"). The parties acknowledge that PHI is not required for QIAGEN's performance of this Agreement and that QIAGEN is neither a "covered health care provider" nor a business associate of the Customer. If in the performance of any services that are related to the provision of Products, Supplies and Equipment under this Agreement, QIAGEN and its employees, representatives, or agents inadvertently and incidentally obtain or gain access to PHI on paper, tape, diskette, CD or other tangible media, in instruments or computers, electronically displayed, or verbally disclosed, QIAGEN agrees that it shall not use, disclose, or reproduce, in any manner, any PHI (including, without limitation, laboratory results and patient demographic information) that it obtains or to which it gains access as a result of this Agreement and shall report such disclosure to Customer. QIAGEN agrees to advise all of its employees, representatives, agents or subcontractors acting on its behalf of the requirements of this paragraph and to cause each of them to become bound to the terms and conditions of this Agreement regarding the confidentiality and privacy of PHI. QIAGEN agrees that it shall use reasonable efforts to promptly report to Customer any incidents in which it or its employees or representatives gain access to, reproduce, use or disclose PHI. QIAGEN shall adopt, implement and maintain throughout the term of this Agreement appropriate and reasonable security policies, procedures and practices, physical and technological destruction and QIAGEN shall require its agents to adopt safeguards that are equally appropriate and adequate. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by either QIAGEN or Customer by virtue of this paragraph.
15. **Confidentiality.** Each party shall use Confidential Information (information of a proprietary or sensitive nature that is not readily available through sources in the public domain) of the other party only for purposes of this Agreement. Otherwise, except as may be required by law neither party shall use, publish nor disclose, or cause anyone else to use, publish or


Customer's Initials

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Terms and Conditions for Product Sales


disclose, any Confidential Information of the other party. The restrictions on disclosure and use hereunder shall not apply to any information which (a) is or becomes generally available to the public, other than as a result of disclosure by the party receiving the information pursuant to this Agreement, (b) was made available to other third persons on a non-confidential basis by the disclosing party prior to the execution of this Agreement, (c) becomes available on a non-confidential basis from a third person, which third person was not itself under an obligation to maintain the confidentiality of such information, or (d) is required by law, regulations, including securities and other disclosure law, subpoena or court order to be disclosed. The provisions of this paragraph shall survive the expiration or other termination of this Agreement regardless of the cause of termination.

16. **Non-Discrimination.** Neither Customer nor QIAGEN shall discriminate in the performance of this Agreement because of race, color, sex, sexual orientation, age, religion, handicap, marital status, or national origin in violation of any applicable federal, state, or local law or regulation.
17. **Entire Agreement.** This Agreement, including any attachments, exhibits or schedules hereto or delivered herewith, represent the entire agreement between the parties with respect to the subject matter hereof. No amendment or modification of the terms of this Agreement shall be binding on either party unless in writing and signed on behalf of each party.
18. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement shall not be assignable by Customer without QIAGEN's prior written consent; except that Customer may assign this Agreement, without the prior consent of QIAGEN, to the successor to all or substantially all of the business of Customer as long as the successor or surviving entity in such transaction agrees to be bound, in writing, by the terms and provisions of this Agreement, and written notice of such assignment is provided to QIAGEN prior to consummation of the transaction. This Agreement shall be assignable by QIAGEN.
19. **Waiver.** The waiver by a party hereto of any breach of or default under any of the provisions of this Agreement shall not be effective unless in writing and the failure of a party to enforce any of the provisions of this Agreement or to exercise any right there under shall not be construed as a waiver of such right.
20. **Severability.** If any part of this Agreement shall be invalid or unenforceable under applicable law, such part shall be ineffective only to the extent of such invalidity or unenforceability, without in any way affecting the remaining parts of this Agreement. In addition, the part that is ineffective shall be reformed in a mutually agreeable manner so as to as most closely approximate, to the extent possible, the intent of the parties hereto.
21. **Survival.** The provisions of this Agreement that may reasonably be interpreted or construed as surviving the expiration or termination of this Agreement (including, without limitation, confidentiality and governing law) shall so survive for the period specified, or if no such period, for the applicable statute of limitations.
22. **Force Majeure.** The timely performance of either party will be excused, except any obligations to pay any amounts then owed to the other party hereunder, and shall not constitute a breach or grounds for termination or prejudice of any rights hereunder if the delay of the performance is the result of a force majeure event; provided that such party shall promptly provide written notice of such delay and the reason therefore to the other party, shall use its reasonable efforts to limit or resolve the cause of the force majeure, and shall resume performance immediately after the cause of the delay is removed.
23. **Independent Contractors.** The parties hereto are independent contractors and nothing in this Agreement will constitute the parties to be partners, nor constitute one party the agent of the other party, nor constitute the relationship to be a joint venture. Neither party shall have, or shall represent that it has, the authority or power to act for or to undertake or create any obligation or responsibility, express or implied, on behalf of, or in the name of the other party.
24. **Governing Law.** This Agreement and any claims, disputes or causes of action relating to or arising out of this Agreement shall be construed in accordance with and governed by the laws of the State of California without giving effect to the conflict of laws principles thereof. All claims under this Agreement which cannot be amicably settled shall be submitted to the competent courts in California. If either party commences an action or proceeding to determine or enforce its rights hereunder, the prevailing party will be entitled to recover from the losing party all expenses reasonably incurred, including court costs, reasonable attorneys' fees and costs of suit as determined by the court. In case that such party does not prevail in all aspects of the submitted claim, such fees and costs shall be allocated between the parties on a pro rata basis commensurate with the partial success of the claim.
25. **Termination for Default.** If either party shall default in a material manner with respect to its performance or obligations or covenants under this Agreement, (including without limitation, Customer's failure to pay outstanding amounts due), the other party shall give the defaulting party written notice of such default, and the defaulting party shall have thirty (30) days to cure such default. If such default is not cured within such 30 day period, the notifying party shall have the right, upon written notice to the defaulting party and without prejudice to any other rights the non-defaulting party may have, to terminate this Agreement. If, during the term of this Agreement, Customer, Stanislaus County, in its sole discretion, determines that sufficient funds are not available to allow for continuation of this Agreement, Stanislaus County may terminate this Agreement upon thirty (30) days written notice to Qiagen without further obligation to Qiagen.



QIAGEN
Terms and Conditions for Product Sales

26. **Insolvency or Bankruptcy.** Either party may, in addition to any other remedies available to it by law or in equity, terminate this Agreement by written notice to the other party in the event the other party shall become insolvent, make an assignment for the benefit of its creditors, or have any case or proceeding voluntarily initiated by or commenced against or other action taken by or against it in bankruptcy or seeking reorganization, liquidation, dissolution of winding-up or any other relief under any bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereafter in effect, and any such event shall have continued for sixty (60) days undismissed, unbonded and undischarged.
27. **Insurance.** Qiagen shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:
- i) General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Qiagen under this Agreement or the general aggregate limit shall be twice the required occurrence limit.
 - ii) Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, Qiagen certifies under section 1861 of the Labor Code that Qiagen is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that Qiagen will comply with such provisions before commencing the performance of the work of this Agreement.
- b) Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by Customer. At the option of Customer, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) Qiagen shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to Customer guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. Buyer, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, Qiagen agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of Qiagen's defense and indemnification obligations as set forth in this Agreement.
- c) Qiagen shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming Customer and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of Qiagen, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of Us; and (c) premises owned, occupied or used by Qiagen. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against Customer and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by Qiagen.
- d) Qiagen's insurance coverage shall be primary insurance regarding Customer and Customer's officers, officials and employees. Any insurance or self-insurance maintained by Customer or Customer's officers, officials and employees shall be excess of Qiagen's insurance and shall not contribute with Qiagen's insurance.
- e) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Customer or its officers, officials, employees or volunteers.
- f) Qiagen's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- g) Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to Customer. Qiagen shall promptly notify, or cause the insurance carrier to promptly notify, Customer of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
- h) Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to Customer; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to Customer; lesser ratings must be approved in writing by Customer.

 Customer's Initials

QIAGEN
Terms and Conditions for Product Sales

i) We shall require that all Qiagen's subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

j) At least ten (10) days prior to the date begin performance of Qiagen's obligations under this Agreement, Qiagen shall furnish Customer with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for Qiagen's subcontractors. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in Customer's sole and absolute discretion, approved by Customer. Buyer reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

k) The limits of insurance described herein shall not limit the liability of Qiagen and Qiagen's officers, employees, agents, representatives or subcontractors.

QIAGEN MAKES NO EXPRESS WARRANTY, AND EXCLUDES AND DISCLAIMS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES IN CONNECTION WITH THE DESIGN, SALE AND MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR USE, EXCEPT FOR THE SPECIFIC WARRANTIES RELATED TO THE EQUIPMENT PROVIDED HEREIN. QIAGEN SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED THAT THE POSSIBILITY OF SUCH DAMAGE EXISTS.

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__ Customer's Initials

QIAGEN
Terms and Conditions for Product Sales

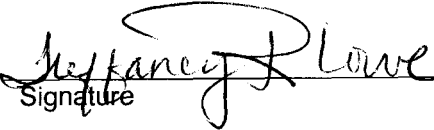
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written below.

Stanislaus County for the benefit of its Health Services
Agency

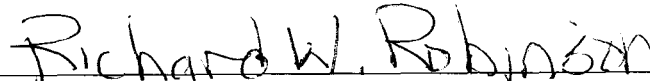
QIAGEN, Inc.



Signature




Signature



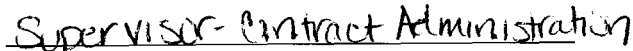
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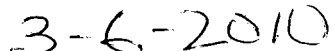
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Title



Title



Date



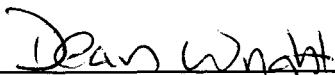
Date

APPROVED AS TO CONTENT:
Health Services Agency

By: 

Mary Ann Lee, Managing Director

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: 

Dean Wright, Deputy County Counsel



FIELD SERVICE AGREEMENT

Roche Diagnostics (RD) Applied Science agrees to maintain the equipment purchased or leased by:

| | | | |
|----------------|--|----------------------|-------|
| Customer Name | Stanislaus County Health Services Agency | Payer Number | _____ |
| Account Number | _____ | Payer Name | _____ |
| Address | 820 Scenic Drive | Payer Address | _____ |
| City and State | Modesto, CA | Payer City and State | _____ |
| ZIP Code | 95350 | Payer ZIP Code | _____ |

Model #1 MPLC 2.0 Serial Number _____

COMMENCEMENT DATE: TBD

The Term of this Service Agreement shall be 12 months from the Commencement Date stated above.

Purchase Order Number: _____ ** A copy of your purchase order must accompany your signed Service Agreement**

| Service Agreement Coverage* | Price |
|---|---------|
| Classic (Silver) ❖ Unlimited on-site emergency service Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time) ❖ On-Site response within 48 hours ❖ Technical Support Center -technical telephone support is 8:00 AM - 6:00 PM Business Days ❖ Maximum of 1 preventive maintenance visit by Roche Diagnostics representative ❖ Necessary warranted parts | \$8,450 |

* Coverage excludes any device used with or associated with the instrument which was not part of the instrument as originally manufactured, e.g., external computers, external water supplies, external un-interruptible power supplies (UPSs) and external power conditioners.

Please provide a blanket P.O.# to cover payment of calls outside your selected coverage period: _____

| Payment Method | Administrative Fee | Please Select One | Please Enter Price |
|-----------------------------|--------------------|-------------------------------------|--------------------|
| ❖ Annual payment in advance | No Additional Fee | <input checked="" type="checkbox"/> | 0.00 |
| ❖ Quarterly Payments | \$75 per Year | <input type="checkbox"/> | \$ |
| ❖ Monthly Payments | \$300 per Year | <input type="checkbox"/> | \$ |

Please Total your selections: **\$8,450.00**

The terms and conditions attached hereto are a part of this Agreement and shall be binding upon RDC and Customer.

The prices stated herein, which are subject to applicable state and local taxes, may be regarded as a quote and are valid through 12/31/2009

Any purchase order referenced herein or attached hereto is for reference purposes only; the Terms and conditions of this Agreement shall be the only terms and conditions that apply.

RETURN TO: Roche Diagnostics
 c/o CF2 RAS Contract Management Department
 9115 Hague Road
 Indianapolis, IN 46256

• 1-800-845-7355

| | |
|---|--|
| ROCHE DIAGNOSTICS | Stanislaus County, for the benefit of its Stanislaus County Health Services Agency |
| By: _____ (Authorized In-House Signature) | I accept the terms and conditions presented on this page and the attached five pages. By: _____ (Authorized Customer Signature) |
| John Dimos Printed Name | Richard W. Robinson Printed Name |
| Manager, Customer Contracting Center Title | CEO Title |
| 3/30/2010 Date | 3/6/10 Date |
| | Telephone Number |

APPROVED AS TO CONTENT:
 Health Services Agency

By:
 Mary Ann Lee/Managing Director

APPROVED AS TO FORM:
 STANISLAUS COUNTY COUNSEL

BY:
 DATE: 3-11-2010

APPROVED AS TO FORM:
 John P. Doering, County Counsel

By: _____
 Dean Wright, Deputy County Counsel

Team #22491

I. PURPOSE

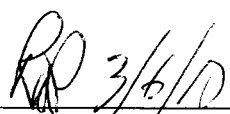
The purpose of this Agreement is to set forth the understandings of the parties of the terms and conditions applicable to the servicing of the "Instrument and Software" identified on the front of this agreement.

II. APPLICATION

This Agreement shall be applicable only to the Instruments and Software distributed by Us that have been subject to an RD warranty or maintenance agreement immediately prior to this Agreement, or any instrument which has been subject to prior reconditioning by Us and accepted in writing under the terms of this Agreement. In the event there has been a lapse in Instrument or Software coverage, the cost of all necessary Instrument reconditioning and all necessary Software upgrades, dial-up validation and verification of Software performance shall be borne solely by You, prior to the implementation of this Agreement.

III. RD OBLIGATIONS

- A. We shall service and provide maintenance of the Instrument, and support for the Software, for a period as defined on this Agreement. For the purposes of this Agreement the terms "service", "repair" and "maintenance" shall include labor time, travel time, repairs and all necessary warranted parts, except as noted on the front of this Agreement; the term "support" shall include technical support via telephone and/or modem connection, necessary software updates, diskettes, manuals, and other required documentation.
- B. We shall provide preventive maintenance inspections, limited to the number shown on the front of this agreement during each twelve (12) month term of this Agreement. The date of the inspections during such twelve month periods, shall be at Our discretion. The services to be performed under the maintenance inspection are set forth in the RD protocol, a copy of which is on file at the principal office of RD. Such preventive maintenance calls may be scheduled by Our Service Department to occur concurrently with any emergency service call. We shall make emergency service calls for the instrument, limited to the number shown on the front of this Agreement, in response to Your calls with respect to any total or partial non-performance of the Instrument or any repairs and/or servicing necessary to ensure the instrument's proper care and working order. If we ship You any repair parts, We will pay the cost of freight each way.
- C. In the case of a total stoppage of all or part of the Instrument, We shall endeavor to provide emergency service within forty-eight (48) hours of Your call.
- D. The following provisions shall apply to any repairs, servicing, and/or Software support by Us.
 1. All repairs, servicing, and/or Software support shall be performed during normal working hours, i.e. Monday through Friday from 8:00 a.m. to 5:00 p.m. (local time), excluding Roche Diagnostics. If You make a demand for Instrument service or repair outside of the normal service hours, You will be charged at our normal hourly rates, and You will provide Us with a purchase order for such repairs. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control.
 2. Upon each instance of repair, servicing, or Software support, as the case may be, We shall make a report indicating Our representative's name, the date, the hour of arrival and of departure, the duration of the visit, the purpose of the visit, a description of the work performed, any improvements to be made or that are planned and any other observations and/or suggestions. We shall leave a copy of each report with You.
 3. When it is deemed necessary by Us, We shall make a documented report to You including any fact that appears to have an impact on the proper functioning of the Instrument or Software and any particular measures required to maintain the Instrument and Software in good working order. We shall specifically note operating errors, faulty Customer maintenance and desired modifications.
 4. Software support rendered under this agreement shall be performed via telephone and/or modem connection, or, in the case of updates, via best delivery method. You will be responsible for the installation of updates within 30 days of receipt.
 5. We shall provide computer hardware troubleshooting for RD provided computer hardware only, and said computers are under the original manufacturer warranty or service agreement, and, if We deem necessary, We shall dispatch a manufacturer service representative.
- E. Our obligations shall not include the following:
 1. Provision of reagents, accessories or consumable items, such as printer paper, fuses, photometric lamps, probes, cuvettes, etc., or any other items identified in the Operator Manual as consumable supplies, which are consumed or required to make the required repair or perform a preventive maintenance.
 2. Services such as the painting of the Instrument and integration of the Instrument or Software with equipment not provided or installed by RD, e.g. computer equipment not sold or distributed by RD.
 3. Peripheral devices (washers, computers used to link more than one (1) analyzer, etc.) which are not an incorporated part of the analyzer, which are sold by Roche Diagnostics are not covered by service agreements.
 4. Water equipment, external computers, un-interruptible power supplies, power conditioners and other accessories external to the Instrument are not covered by service agreements.


Customer Initials & Date

Service Agreement Terms and Conditions**IV. CUSTOMER OBLIGATIONS**

- A. You agree to use the Instrument and Software in strict accordance with Our operating instructions and software license agreement, to permit servicing, repair, and software support work by Our personnel only, and to obtain Our written consent prior to connecting the Instrument to any other equipment or using non-RD equipment and/or accessories with the Instrument, or utilizing the Software with any other equipment. You further agree not to install any software not provide by Us.
- B. You agree You will not install non-Roche supplied software.
- C. You agree to use the Instrument and Software in an appropriate location and with electrical connections that correspond to the electrical supply specifications of the hardware manufacturer. You will protect the Instrument and associated Hardware from all adverse elements, such as dirt, dust and liquids of any kind.
- D. You will allow Our personnel free access to operating locations of any Instrument and Software to be serviced, repaired, maintained or supported. You agree to provide adequate space around the Instrument and adequate modem connection or network to the Software. In turn, We will respect all Your internal operating procedures of which You advise Us as well as general security instructions.

V. EXCLUSIONS FROM COVERAGE

Your payments under this Agreement do not cover repairs or Software support which may not be imputed to the manufacturer or to RD, including in particular, and without limiting the generality of the foregoing:

- A. Repairs or Software support required to remedy breakdown or damage which results from operator errors, abnormal or unapproved uses, unauthorized installed software or software updates, acts of third parties, viruses, faulty electrical connections, fluctuations or failures in air conditioning, heating or cooling systems and electrical power failures.
- B. Repairs or Software support required to remedy breakdown or damage which results from force majeure, including natural disasters such as fire, flood, earthquake, wind damage, tornadoes and lightening, and/or acts of violence, such as strikes, riots, sabotage, demonstrations, acts of terrorism, war, civil war, acts of public authorities and all other acts beyond Our reasonable control or the reasonable control of the equipment manufacturer.
- C. Repairs or Software support required to remedy breakdown or damage caused by unauthorized installed software or updates.
- D. Repairs or Software support required to remedy breakdown or damage caused by defects or malfunctions of any external computer hardware or connections to RD equipment, or any external water supply equipment, un-interruptible power supplies, power conditioners, or any other external connections to RD equipment.
- E. Normal daily, weekly, monthly, quarterly and semi-annual maintenance services to be provided by You such as the replacement of fuses, lamps, tubes, reagents and probes, as defined in the Operator Manual or Customer Bulletins. We will provide such training upon installation of the RD equipment.
- F. Repairs required to remedy problems due to improper completion of, or the lack of normal operator daily, weekly, monthly, quarterly and semi-annual maintenance service as identified in the Instrument Operator Manual.
- G. Repairs required to remedy problems due to use of accessories, products, and/or software or software updates not supplied or approved by Us.
- H. In the event We are called upon to perform repairs such as those listed in A, B, C, D, E, F and/or G above, the following provisions shall apply:
 - 1. We shall compile detailed cost estimates describing the work to be performed, the number and cost of supplies and parts to be provided, the expected time to completion, the hourly rate and other details and conditions of the repairs.
 - 2. You will provide Us with a purchase order for such repairs and/or Software support. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control. Repairs and Software Support described in this section shall be billed separately.

VI. SPECIAL SERVICE

- A. Service work of a special nature involving calls to move equipment or hardware, modify units for special applications and accessories, have on-site software support, etc., will be quoted on an individual basis. This quote may include air fares, preparatory time (e.g., time required to develop/modify customer software parameters/code at a location remote from the customer site), and associated travel expenses from outside the immediate area if required. An estimate of any special services expenses shall be submitted to and approved by Customer prior to completion of the service event.
- B. The selection, acquisition, and service of external devices is Your responsibility. We will only be responsible for servicing Our instruments and software up to the communications port for linking to a computer. Any hardware, cables, switches, or peripheral devices which are connected externally are not Our responsibility. Damage to the Instrument or Software as a result of hardware failure or connection to external devices shall invalidate this ~~Service~~ Agreement. In the event of a communications failure between an Instrument or Software and a host or related computer, You may contact the Technical Support Center for help isolating the cause. If the cause cannot be identified, Our Field Service Representative may be dispatched at Your request. If the source of failure is determined to be with hardware or software that is external to the instrument, the service call shall be invoiced at Our then prevailing rates regardless of Service Agreement. On-Site support for Software or Hardware shall be invoiced at Our then prevailing rates.

RWR 3/6/10

Customer Initials & Date

- C. The following provisions shall apply to any special service of an Instrument, Software or Hardware pursuant to this section.
1. You shall give Us at least one (1) month advance written notice of any request for special service. It shall be Your responsibility to provide transportation and personnel assistance necessary to properly relocate the Instrument and/or Hardware if applicable.
 2. A detailed cost estimate shall be submitted by Us for any special service, including the details of the service, the cost of the special service and any other pertinent information.
 3. Upon receiving an agreement regarding the special service, You shall forward a purchase order to Us for the special service to be performed. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control. All special service requests are subject to final approval by Us.

VII SOFTWARE UPDATES

We may be required to update the Software in order to improve its use and reliability. Such updates shall be covered by this Agreement. Updated Software shall be subject to this Agreement in all respects. Updates shall not extend the defined Agreement coverage period.

VIII. INSTRUMENT MODIFICATIONS

We may be required to modify the Instrument in order to improve its use and reliability. All such modifications shall be the subject of a detailed cost estimate by Us and shall be assented to by You by submitting a purchase order to Us. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control. All modification work shall be billed separately except for modifications required to improve use or reliability which occur during the one (1) year warranty period, which shall be free. Modified Instruments shall be subject to this Agreement in all respects. Modifications shall not extend the normal warranty period.

IX. DEFAULT

Each of the following is a "Default" under this Agreement: (a) You fail to provide payment of any sum to be paid hereunder within 45 calendar days of its due date; (b) You do not perform any of Your other obligations under this Agreement or in any other agreement with Us and this failure continues for 45 calendar days after We have notified You of Your non-performance; (c) You become insolvent, You dissolve or are dissolved, or You assign Your assets for the benefit of Your creditors, or enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) any guarantor of this Agreement dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed in clause (c) above; or (e) You offer products purchased or received under this Agreement or any other agreement with Us for resale.

- A. Abusive and repetitive requests by You for service, repair, support, or parts shall entitle Us to terminate this Agreement via the following procedure.
1. We shall inform You of the nature of such abuse and corroborate the same with incidences of unnecessary trips or request for Software support, etc.
 2. In addition to such corroboration, We shall provide You with thirty (30) days written notice of Our intent to terminate the Agreement and the Agreement shall so terminate at the end of said thirty-day period.

B. REMEDIES

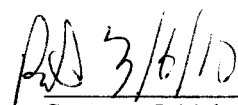
If a Default occurs, We may do one or more of the following: (a) We may cancel or terminate this Agreement or any or all other agreements that We have entered into with You; (b) We may require You to immediately pay Us, as compensation for loss of Our bargain and not as a penalty, a sum equal to (i) the Service Agreement Payments, and any other amounts owing under this Agreement at the time of default, (ii) the present value of all unpaid Service Agreement Payments for the remainder of the term discounted at 5% per year, compounded monthly, plus (iii) all other amounts due or that become due under this Agreement; (c) We may cease providing Service under this Agreement or any other Agreements We have entered into with You; (d) We may exercise any other right or remedy available at law or in equity. YOU AGREE TO PAY ALL OF OUR COSTS OF ENFORCING OUR RIGHTS AGAINST YOU, INCLUDING REASONABLE ATTORNEYS' FEES. Remedies would comply with any applicable federal and state laws.

X. INDEMNITY

You agree to indemnify Us from all liabilities arising from Your misuse of the Equipment and/or Software, as described in the Certification Statements and herein.

XI. PRICE/PAYMENT TERMS

- A. After the first 24 months from the commencement of this Agreement, we may adjust each selected service price once annually which will require a new agreement to be signed. This price includes the cost of traveling, labor and providing of necessary warranted parts except as noted on the front of this document; it further includes the cost of software support and RD required software updates except as noted on the front of this Agreement. You are responsible for any state and local sales taxes that may apply to this Agreement and agree to pay when due, either directly or by reimbursing us, such taxes.
- B. The payment required hereunder shall be payable at the beginning of each service period upon receipt of an invoice. All payments are due net thirty (30) days from Our invoice date. Customer agrees to comply with the California Prompt Payment Act, GS 927.


Customer Initials & Date

- C. The prices for special services shall be determined from detailed and descriptive estimates. Such estimates shall include all essential elements in the calculation of the price and shall include in particular the estimated number of work hours required, the hourly billing rates and a list of supplies as well as prices or any other factors usually mentioned in regard to such services.
- D. In the event that the legislature in Your state does not appropriate funds for Services or there are no funded appropriations from which payment can be made, You may, upon thirty (30) days written notice to RD, cancel this agreement.

XII TERM AND TERMINATION

The term of this Agreement shall be for the term set forth on the front of this Agreement, beginning on the Commencement Date. In the event of a material breach of this Agreement by Us, You may terminate this Agreement upon ninety (90) days written notice to Us; provided, however, that such notice shall be ineffective if We cure such breach within the ninety (90) day notice period. All of Your obligations must be current to terminate this Agreement prior to completion of the Initial Term.

XIII RENEWAL

Upon termination of this Agreement, We may, in Our discretion, renew this Agreement, decide not to renew this Agreement, or offer alternative coverage and/or pricing.

XIV. WARRANTY/LIMITATION OR REMEDY/INDEMNITY

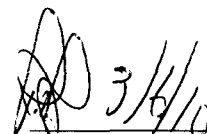
- A. We warrant that the services provided under this Agreement will be free from defects of workmanship for a period of thirty (30) days from the date of service.
- B. WE HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE INSTRUMENT, SOFTWARE, SOFTWARE SUPPORT, SOFTWARE UPDATES, PARTS AND SERVICES PROVIDED, EXCEPT THE LIMITED WARRANTY SET FORTH ABOVE. WE ARE NOT LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF THE USE OF THE CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES AND DOWN-TIME COSTS, RESULTING FROM OR ARISING IN CONNECTION WITH THE PERFORMANCE, DELAY IN PERFORMANCE OR NONPERFORMANCE OF ANY TERMS OR CONDITIONS OF A ROCHE DIAGNOSTICS WARRANTY OR SERVICE AGREEMENT OR FROM THE USE OR MISUSE OF THE INSTRUMENT OR SOFTWARE (OR ANY SUBSTITUTE THEREFORE) OR ANY MATERIAL OR WORKMANSHIP DELIVERED HEREUNDER, EVEN IF WE HAVE BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. YOUR EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE RE-PERFORMANCE OF ANY SERVICE WHICH PROVES TO BE DEFECTIVE, UNTIL THE DEFECT IS REMEDIED. Neither party shall be liable to the other party for incidental, indirect, special or consequential damages. Each party agrees to indemnify the other part from all liabilities arising from the other party's negligence or willful misconduct or failure to perform its duties or obligations, except to the extent caused by the negligence or willful misconduct of the party seeking indemnification. To the extent permitted by law, you agree to indemnify Roche from all liabilities arising from your misuse.

XVI MISCELLANEOUS

You agree that the laws of the State of California shall govern this Agreement and You consent to the exclusive jurisdiction of and venue in any court located within the State of California. You expressly waive Your rights to trial by jury. Should any provision of this Agreement be held invalid, ineffective or unenforceable, the remaining terms shall remain in full force and effect. Our obligations under this Agreement shall be suspended in the event that We are hindered or prevented from complying with Our obligations because of labor disturbances, wars, fires, storms, accidents, interferences or any other cause beyond Our reasonable control, as described in section V above. You agree that the terms and conditions in this Agreement with all Roche Diagnostics addenda, make up the entire agreement between You and Us with respect to the subject matter hereof. No waiver of or modification to any term of this Agreement is valid unless it is in writing and signed by Us and You. You agree that We are authorized to supply missing information or correct obvious errors in this Agreement. If We delay or fail to enforce any of Our rights under this Agreement, We will be able to enforce Our rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail, certified with return receipt requested, addressed to the party receiving the notice at its address shown on the front of this Agreement. All of Our rights shall survive the term of this Agreement. The titles and headings used in this Agreement are for convenience only and shall not be used to interpret the term and conditions of this Agreement.

XVII INSURANCE:

RDC has made a business decision to self insure their exposure to product liability and completed operations risks. You may obtain evidence of Contractor's insurance coverage from the Memorandum of Insurance on the following website: <http://www.marsh.com/moi?client=A699>. The Memorandum of Insurance on this website will serve as evidence that Contractor is purchasing insurance protection from financially sound insurers at prudent retention levels or has elected to self insure on some of its exposures, and will continue at the same or higher level of coverage.


Customer Initials & Date

WARRANTY SERVICE AGREEMENT TERMS AND CONDITIONS

I. PURPOSE

The purpose of this Agreement is to set forth the understandings of the parties of the terms and conditions applicable to the servicing of the "Instrument" installed by RDC at the Customer's location.

II. APPLICATION

This Agreement shall be applicable only to instruments distributed and installed by RDC.

III. RDC OBLIGATIONS

A. RDC shall service the Instrument for 12 months from the effective date of the Instrument Agreement. For the purposes of this Agreement, the terms "service" and "maintenance" shall include labor time, travel time, repairs and replacement parts.

B. In the case of a total stoppage of all or part of the Instrument, RDC shall endeavor to provide emergency service within forty-eight (48) hours of the Customer's call. Where it appears to the service representative that the nature and gravity of the stoppage will cause a delay in performance in excess of forty-eight (48) hours, RDC shall immediately inform the Customer as to the nature and gravity of the problem and the anticipated time necessary to put the Instrument in working order.

C. The following provisions shall apply to all repairs and/or servicing by RDC:

1. All repairs and/or servicing shall be performed during normal working hours, i.e., Monday through Friday from 9:00 A.M. to 5:00 P.M. If the Customer makes a demand for service outside of the normal service hours, RDC shall use its best efforts to provide such service.

2. The length of time required for repairs and/or servicing shall always be kept at a minimum. Repairs and servicing shall be effected in a fashion which results in the least disruption to the operation of the instrument.

3. Upon each instance of repair or servicing, as the case may be, the RDC service representative shall make a report indicating his or her name, the date, the hour of arrival and of departure, the duration of the visit, the purpose of the visit, a description of the work performed, any improvements to be made or that are planned and any other observations and/or suggestions. Each report shall be signed by the RDC service representative and the Customer. The Customer shall retain one copy.

4. When it is deemed necessary, RDC shall make a written report to the Customer including any fact which appears to have an impact on the proper functioning of the Instrument and any particular measure required to maintain the Instrument in good working order. RDC shall specifically note operating errors, faulty Customer maintenance, and desired modifications.

D. The obligations of RDC shall not include the following:

1. The providing of consumable items, such as printer paper, magnetic tape, cables, reagents, cuvettes, seals, accessories to pipettes, and in general any RDC consumable products.

2. Services such as the painting of the Instrument and the integration of the Instrument with equipment not provided or installed by RDC, e.g., computer equipment not sold by or distributed by RDC.

E. RDC agrees to comply with the terms and conditions of the Business Addendum Agreement attached hereto and made a part hereof.

IV. CUSTOMER OBLIGATIONS

A. The Customer agrees to use the Instrument in strict accordance with RDC operating instructions to permit service and repair work by RDC personnel only, and to obtain the written consent of RDC prior to connecting the Instrument to any other equipment or using non-RDC equipment and/or accessories with the instrument.

B. The Customer agrees to use the Instrument in any appropriate location and with electrical connections which correspond to the electrical supply specifications of the manufacturer. The Customer shall protect the Instrument from all adverse elements such as dirt, dust and liquids of any kind.

C. The Customer agrees to allow RDC personnel free access to operating locations of any Instrument to be serviced and to provide adequate space around the Instrument, during regular business hours. In turn, RDC agrees to respect all internal operating procedures of the Customer of which it is advised as well as general security instructions.

V. EXCLUSIONS FROM COVERAGE

This Agreement shall not apply to repairs which may not be imputed to the manufacturer or to RDC, including in particular, and without limiting the generality of the foregoing:

A. The repair of breakdowns or damages which result from operator errors, lack of operator maintenance, abnormally or unapproved uses, acts of third parties, faulty electrical connections, fluctuations or failures in air condition, heating or cooling systems and electrical power failures.

B. The repair of breakdowns or damages caused by force majeure, including natural disasters such as fire, food, earthquake, wind damage and lightning, strikes, riots sabotage demonstrations, acts of terrorism, war, civil war, acts of public authorities, and all other acts beyond the reasonable control of RDC or the manufacturer.

C. The repair of breakdowns or damages caused by defects or malfunctions of any external computer hardware attached to the instrument.

D. Normal daily, weekly, monthly and semi-annual maintenance services to be provided by the Customer such as replacement of fuses, lamps, tubes, reagents and probes. RDC shall provide training on all such normal daily, weekly, monthly and semi-annual maintenance services at the time of installation.

E. In the Event that RDC is called upon to perform repairs such as those listed in A, B, C and D above, the following provisions shall apply:

1. RDC shall compile detailed cost estimates describing the work to be performed, the number and cost of supplies and parts to be provided, the expected time to completion, the hourly rate and other details and conditions of the repairs.

2. Approval of the type of repairs described in this section shall be given by the Customer submitting a purchase order to RDC and shall be billed separately from other repair and service work performed under this Agreement. The repairs and/or recondition described in this section are not obligatory and may not be accepted by the Customer. In such case, however, RDC may require that the subject instrument(s) cease to be covered by this Agreement. Final approval for all determinations pursuant to this section is at the discretion of the RDC National Service Manager.

VI. INSTRUMENT MODIFICATIONS

RDC may be required to effect modifications to an Instrument in order to improve its use and reliability. All such modifications shall be the subject of a detailed cost estimate by RDC and shall be assented to by the Customer by submitting a purchase order to RDC. All modification work shall be billed separately except modifications required to improve use or reliability which occur during the one (1) year warranty period, which shall be free. Modified Instruments shall be subject to this Agreement in all respects. Modifications shall not extend the normal warranty period.

VII. TERMS AND TERMINATION

The term of this Agreement shall be for 12 months from the effective date of the Instrument Agreement.

A. Abusive and repetitive requests by the Customer for service and/or parts shall entitle RDC to terminate this Agreement via the following procedure:

1. RDC shall inform the Customer of the nature of such abuse and corroborate the same with incidences of unnecessary trips, etc.

2. In addition to such corroboration, RDC shall provide the Customer with thirty (30) days written notice of its intent to terminate the Agreement and the Agreement shall so terminate at the end of said thirty-day period.

B. RDC reserves the right to suspend its performance hereunder during any period in which Customer's accounts with RDC are not current. In the event of such suspension, RDC shall establish such conditions for reinstatement as it deems appropriate to assure the Instrument is restored, at Customer's expense, to a condition at least as good as the condition it was in prior to the suspension.

C. RDC further reserves the right to terminate this Agreement in the event Customer fails to cure any breach hereof within twenty (20) days of notice of such breach by RDC, in writing.

VIII. WARRANTY/LIMITATION REMEDY/INDEMNITY

A. LIMITED WARRANTY - RDC warrants to the Customer that the material and workmanship delivered under this Agreement will be free from defects for a period of thirty (30) days from the date of delivery of such material or workmanship or, if the material or workmanship is installed by a RDC service representative from the date of such installation.

B. DISCLAIMER OF WARRANTY - RDC HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE MATERIALS OR WORKMANSHIP DELIVERED HEREUNDER, EXCEPT THE LIMITED WARRANTY SET FORTH IN SECTION IX (A) ABOVE.

C. LIMITATIONS OF REMEDY - THE PARTIES HERETO AGREE THAT THE CUSTOMER IS ENTITLED ONLY AS ITS EXCLUSIVE REMEDY FOR DEFECTIVE MATERIAL OR WORKMANSHIP FURNISHED THE CUSTOMER UNDER THIS AGREEMENT, TO THE REPAIR OR REPLACEMENT BY RDC OR SUCH DEFECTIVE MATERIAL OR WORKMANSHIP.

D. 1. NO LIABILITY FOR FORCE MAJEURE - RDC SHALL NOT BE LIABLE FOR ANY DAMAGE TO THE CUSTOMER WHICH RESULTS FROM NONPERFORMANCE OR DELAY IN PERFORMANCE OF ANY TERMS OR CONDITIONS OF THIS AGREEMENT CAUSED BY ACTS OF GOD, LAWS, REGULATIONS OR OTHER ACTS OF GOVERNMENT, FREIGHT EMBARGOES, ACCIDENTS OR OTHER DELAYS IN TRANSPORTATION, LABOR SHORTAGES, STRIKES OR OTHER LABOR PROBLEMS, INABILITY TO SECURE MATERIAL OR SUPPLIES OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF RDC.

2. NO LIABILITY FOR CONSEQUENTIAL DAMAGE - RDC SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES AND DOWNTIME COSTS, RESULTING FROM OR ARISING IN CONNECTION WITH THE PERFORMANCE, DELAY IN PERFORMANCE OR NONPERFORMANCE OF ANY TERMS OR CONDITIONS OF THIS AGREEMENT OR FROM THE USE OR MISUSE OF THE INSTRUMENT (OR ANY SUBSTITUTE THEREFORE), AS DESCRIBED IN THE CERTIFICATION STATEMENTS OR HEREIN, OR ANY MATERIAL OR WORKMANSHIP DELIVERED HEREUNDER, EVEN IF RDC HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

IX. NOTICE

Any notice given or required pursuant to the terms of this Agreement shall be delivered via certified or registered mail (return receipt requested) and shall be deemed effective five (5) days after the date of mailing, postage prepaid and sent to the address of the parties set forth above, unless notice of a different address is provided.

X. GENERAL

A. ENTIRE AGREEMENT. This Agreement shall constitute the final, complete and exclusive written expression of all terms and conditions agreed upon by the parties hereto in regard to the servicing of the Instrument. Any statement, terms or conditions of any purchase order submitted by the Customer in respect to the services to be supplied hereunder, which are in addition to or differ from the terms and conditions of this Agreement are rejected and shall be given no force or effect.

B. GOVERNING LAW. This Agreement is governed by the internal laws of the State of California without regard to conflicts of laws principles. Customer hereby irrevocably consents to the personal jurisdiction of the Federal and State courts located in California. Customer waives trial by jury in any action hereunder.

C. SUCCESSORS INTERESTS. This Agreement shall be binding on RDC and Customer and their respective successors and assigns, and shall insure to the benefit of RDC and Customer and the successors and assigns.

XI. INSURANCE

RDC has made a business decision to self insure their exposure to product liability and completed operations risks. You may obtain evidence of Contractor's insurance coverage from the Memorandum of Insurance on the following website: <http://www.marsh.com/moi?client=A699>. The Memorandum of Insurance on this website will serve as evidence that Contractor is purchasing insurance protection from financially sound insurers at prudent retention levels or has elected to self insure on some of its exposures, and will continue at the same or higher level of coverage.

4. Security Standards

4.1 BA shall ensure the implementation of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits.

4.2 BA shall ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards;

4.3 BA is required to report to the covered entity any security incident of which it becomes aware.

4.4 BA shall make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary for purposes of determining the covered entity's compliance with the regulations.

4.5 Covered entity may terminate the contract if the covered entity determines that the BA has violated a material term of the contract.

5. Use and Disclosure of Protected Health Information

5.1 Except as otherwise provided in this Business Associate Exhibit, BA may use or disclose PHI to perform functions, activities or services for or on behalf of the COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the COUNTY or the minimum necessary policies and procedures of the COUNTY.

5.2 Except as otherwise limited in this Business Associate Exhibit, BA may use and disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

5.3 Except as otherwise limited in this Business Associate Exhibit, BA may use PHI to provide data aggregation services related to the health care operation of COUNTY.

5.4 BA shall not use or further disclose PHI other than as permitted or required by this Business Associate Exhibit, or by law.

5.5 BA will promptly report, in writing, to COUNTY any use or disclosure of a PHI not provided for by this Exhibit within seven (7) days of the time BA becomes aware of such use or disclosure, pursuant to 45 CFR, Section 164.528.

5.6 BA shall document such disclosure of PHI and information related to such disclosures as would be required for the COUNTY to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

5.7 BA shall provide to COUNTY or an individual, within seven (7) days, information collected in accordance with Title 45, CFR, Section 164.528, to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

6. Agents and Subcontractors of BA

BA shall ensure that any agent, including subcontractor, to which the BA provides PHI received from, or created or received by BA on behalf of the COUNTY, shall comply with the same restrictions and conditions that apply through this Business Associate Exhibit to the BA with respect to such information.

7. Access to PHI

7.1 BA shall provide access, within seven (7) days of such a request, to the COUNTY or, as directed by the COUNTY, to PHI in a designated record set to an individual in order to meet the requirements of Title 45, CFR, Section 164.524.

7.2 BA shall, within seven (7) days of such a request, provide individual patient or their legal representative with access to PHI contained in BA's records, pursuant to 45 CFR, Section 164.504 (e)(2)(F).

8. Amendment(s) to PHI

BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply, to the extent required by law, with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (including but not limited to Title 42, U.S.C. Section 1320d et seq.) and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (CFR), Parts 142, 160, 162 and 164), hereinafter collectively referred to as the "Privacy Rule and Security Standards."

If COUNTY becomes aware of a pattern of activity that violates the HIPAA Privacy Rule, and reasonable steps to cure the violation are unsuccessful, the COUNTY may terminate the Agreement, or if not feasible; report the problem to the Secretary of the US Department of Health and Human Services.

COUNTY and BA desire to facilitate the billing and/or transfer of protected health information (PHI), as defined in 45 CFR, Section 164.504, by electronically transmitting and receiving data in agreed formats and to assure that such transactions comply with relevant laws and regulations.

1. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms used in the Privacy Rule.

- 1.1 **"Business Associate" (BA)** shall mean CONTRACTOR as identified in this Agreement.
- 1.2 **"Covered Entity"** shall mean Stanislaus County, Health Services Agency (COUNTY).
- 1.3 **"Individual"** shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- 1.4 **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- 1.5 **"Protected Health Information" (PHI)** shall have the same meaning as the term "protected health information" in 45 CFR, Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.6 **"Security Rule"** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, Subpart C.
- 1.7 **"Physical Safeguards"** are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 1.8 **"Security or Security measures"** encompass all of the administrative, physical, and technical safeguards in an information system.
- 1.9 **"Security incident"** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Operations

- 2.1 **Document Standards.** Each party may transmit to, or receive from, the other party, either electronically or using other media, PHI and/or individually identifiable health information, as defined in 42 U.S.C., Section 1320d, as it pertains to the provision of services under this Agreement. All documents shall be transmitted in accordance with the standards set forth in the Health Services Agency's Privacy Policy.
- 2.2 **System Operations.** Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing necessary to effectively, reliably, and confidentially transmit and receive documents.

3. Electronic Transmissions

Documents shall not be deemed to have been properly received, and no document shall give rise to any obligation, until decrypted and accessible to the receiving party at such party's receipt counter as designated by regulation or policy.

BA shall make any amendment(s) to PHI in a designated record set that the COUNTY directs or at the request of the COUNTY or an individual within seven (7) days of such request in accordance with Title 45, CFR, Section 164.526.

9. Records Available

BA shall make its internal practices, books, and records related to the use, disclosure, and privacy protection of PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY, available to the COUNTY or to the Secretary of HHS for purposes of the Secretary determining compliance with the Privacy Rule, in a time and manner designed by the COUNTY or the Secretary of HHS.

10. Retention, Transfer and Destruction of Information

10.1 Upon termination of this Agreement for any reason, BA shall retain all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY in a manner that complies with the Privacy Rule. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.2 Prior to termination of this Agreement, the BA may be required by the COUNTY to provide copies of PHI to the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.3 When the retention requirements on termination of the Agreement have been met, BA shall destroy all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA. BA, its agents or subcontractors shall retain no copies of the PHI.

10.4 In the event that BA determines that returning or destroying the PHI is not feasible, BA shall provide the COUNTY notification of the conditions that make destruction infeasible. Upon mutual agreement of the parties that the destruction of the PHI is not feasible, BA shall extend the protections of this Business Associate Exhibit to such PHI and limit further use and disclosures of such PHI for so long as BA, or any of its agents or subcontractors, maintains such PHI.

11. Force Majeure

No party shall be liable for any failure to perform its obligations in connection with any transaction or any document where such failure results from any act of nature or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) that prevent such party from transmitting or receiving any documents.

12. Limitation of Damages

Other than specified in elsewhere, neither party shall be liable to the other for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

13. Attorney-Client Privilege

Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by BA or COUNTY by virtue of this Subparagraph.

14. Interpretation

Any ambiguity in this Business Associate Exhibit shall be resolved to permit the COUNTY to comply with the Privacy Rule and Security Standards.

Stanislaus County Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354

BOARD OF SUPERVISORS

2010 APR 30 A 10:35

TRANSMITTAL

TO: Roche Diagnostics
c/o CF2 RAS Contract Management Department
9115 Hague Road
Indianapolis, IN 46256

SUBJECT: Stanislaus County Health Services Agency

DATE: 4/30/10

We are sending you attached under separate cover the following material:

| | | |
|---|---------------------------------------|--|
| <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Change Order | <input type="checkbox"/> Specifications |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Plans | <input type="checkbox"/> Computer Printout |
| <input type="checkbox"/> Prints | <input type="checkbox"/> Samples | <input type="checkbox"/> Updates |

| COPIES | DATE | DESCRIPTION |
|--------|---------|--|
| 1 | 4/30/10 | Fully-Executed Field Service Agreement |

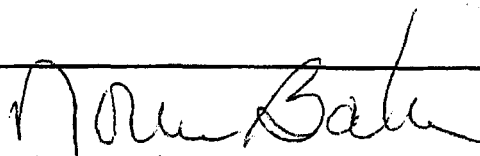
REMARKS:

For your files

Clerk of the Board: Item No. 2010-190 Dated: April 6, 2010

COPIES: Tom Flores, Auditor (Purchasing)
Liz King, Clerk of the Board
Patricia Hill Thomas
X 2.1.1 (1702)
X 15.79.6

SIGNED:


Norma Baker

MagNA Pure™ LC 2.0 Proposal

Line Item Quote

| Effective dates of proposal | Description | Cat. No. | Price |
|-------------------------------|--|-------------|--------------|
| 01/07/2010 through 05/30/2010 | MagNA Pure™ LC 2.0 System | 05197686001 | \$ 84,500.00 |
| | Year One: All Inclusive Service Agreement, MagNA Pure LC 2.0 | | \$ 8,450.00 |
| | Year Two: All Inclusive Service Agreement, MagNA Pure LC 2.0 | 03734862001 | No Charge |
| | Freight Charges (Two Day Service) | | \$1,300.00 |
| | Taxes (8.375%) | | \$7,076.88 |
| | TOTAL | | |

Note

Above revised MagNA Pure LC 2.0 Line Item Quote provided in March 12, 2010 email from Roche Diagnostic Corporation—Roche Applied Science division account manager.

Eric Cubillo

From: Fischer, Katherine [katherine.fischer@roche.com]
Sent: Friday, March 26, 2010 12:44 PM
To: Eric Cubillo
Cc: Young, Jennifer {DNZL~Indianapolis}; Thomas, Rhonda {DNFC~Indianapolis}
Subject: Stanislaus County

Eric – thank you for your call this afternoon. If you would, please FedEx your signed documents to the address listed in my signature below, to my attention. Your total PO amount would be \$102,142.78, with the following breakdown:

| | |
|------------|-------------|
| Instrument | \$84,500.00 |
| Tax | \$7,076.22 |
| Total | \$91,576.22 |

| | |
|---------|------------|
| Service | \$8,450.00 |
| Tax | \$707.68 |
| Total | \$9,157.68 |

| | |
|---------|------------|
| Freight | \$1,300.00 |
| Tax | \$108.88 |
| Total | \$1,408.88 |

Please let me know if you have any questions – we look forward to a continued relationship with Stanislaus County. Have a wonderful afternoon.

Katie

Katherine Fischer
Supervisor, Contracting - Applied Science

Roche Diagnostics Corporation
Customer and Business Support Center
9115 Hague Road
Indianapolis, IN 46250-0457

Phone: +1-317-521-2289
Mobile: +1-317-270-8758
Fax: +1-800-888-1902
<mailto:katherine.fischer@roche.com>
www.roche-diagnostics.us

Confidentiality Note: This message is intended only for the use of the named recipient(s) and may contain confidential and/or proprietary information. If you are not the intended recipient, please contact the sender and delete this message. Any unauthorized use of the information contained in this message is prohibited.



FIELD SERVICE AGREEMENT

Roche Diagnostics (RD) Applied Science agrees to maintain the equipment purchased or leased by:

| | | | |
|----------------|--|----------------------|-------|
| Customer Name | Stanislaus County Health Services Agency | Payer Number | _____ |
| Account Number | _____ | Payer Name | _____ |
| Address | 820 Scenic Drive | Payer Address | _____ |
| City and State | Modesto, CA | Payer City and State | _____ |
| ZIP Code | 95350 | Payer ZIP Code | _____ |
| Model #1 | MPLC 2.0 | Serial Number | _____ |

COMMENCEMENT DATE: TBD

The Term of this Service Agreement shall be 12 months from the Commencement Date stated above.

Purchase Order Number: _____ ** A copy of your purchase order must accompany your signed Service Agreement**

| Service Agreement Coverage* | Price |
|---|---------|
| Classic (Silver) ❖ Unlimited on-site emergency service Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time) ❖ On-Site response within 48 hours ❖ Technical Support Center -technical telephone support is 8:00 AM - 6:00 PM Business Days ❖ Maximum of 1 preventive maintenance visit by Roche Diagnostics representative ❖ Necessary warranted parts | \$8,450 |

* Coverage excludes any device used with or associated with the instrument which was not part of the instrument as originally manufactured, e.g., external computers, external water supplies, external un-interruptible power supplies (UPSs) and external power conditioners.

Please provide a blanket P.O.# to cover payment of calls outside your selected coverage period: _____

| Payment Method | Administrative Fee | Please Select One | Please Enter Price |
|-----------------------------|--------------------|-------------------------------------|--------------------|
| ❖ Annual payment in advance | No Additional Fee | <input checked="" type="checkbox"/> | 0.00 |
| ❖ Quarterly Payments | \$75 per Year | <input type="checkbox"/> | \$ |
| ❖ Monthly Payments | \$300 per Year | <input type="checkbox"/> | \$ |

Please Total your selections: **\$8,450.00**

The terms and conditions attached hereto are a part of this Agreement and shall be binding upon RDC and Customer.
 The prices stated herein, which are subject to applicable state and local taxes, may be regarded as a quote and are valid through 12/31/2009
 Any purchase order referenced herein or attached hereto is for reference purposes only; the Terms and conditions of this Agreement shall be the only terms and conditions that apply.

RETURN TO: Roche Diagnostics
 c/o CF2 RAS Contract Management Department • 1-800-845-7355
 9115 Hague Road
 Indianapolis, IN 46256

| | |
|---|---|
| ROCHE DIAGNOSTICS | Stanislaus County Health Services Agency |
| By: (Authorized In-House Signature) | I accept the terms and conditions presented on this page and the attached five pages. By: (Authorized Customer Signature) |
| Printed Name: <u>John Dimos</u> Title: <u>Manager, Customer Contracting Center</u> | Printed Name: <u>Richard W. Robinson</u> Title: <u>CEO</u> |
| Date: <u>3/30/2010</u> | Date: <u>4/16/10</u> Telephone Number: <u>209-525-4305</u> |

APPROVED AS TO CONTENT:
 Health Services Agency
 By:
 Mary Ann Lee, Managing Director
 Date: _____

APPROVED AS TO FORM:
 STANISLAUS COUNTY COUNSEL
 BY:
 DATE: 3-11-2010

I. PURPOSE

The purpose of this Agreement is to set forth the understandings of the parties of the terms and conditions applicable to the servicing of the "Instrument and Software" identified on the front of this agreement.

II. APPLICATION

This Agreement shall be applicable only to the Instruments and Software distributed by Us that have been subject to an RD warranty or maintenance agreement immediately prior to this Agreement, or any instrument which has been subject to prior reconditioning by Us and accepted in writing under the terms of this Agreement. In the event there has been a lapse in Instrument or Software coverage, the cost of all necessary Instrument reconditioning and all necessary Software upgrades, dial-up validation and verification of Software performance shall be borne solely by You, prior to the implementation of this Agreement.

III. RD OBLIGATIONS

- A. We shall service and provide maintenance of the Instrument, and support for the Software, for a period as defined on this Agreement. For the purposes of this Agreement the terms "service", "repair" and "maintenance" shall include labor time, travel time, repairs and all necessary warranted parts, except as noted on the front of this Agreement; the term "support" shall include technical support via telephone and/or modem connection, necessary software updates, diskettes, manuals, and other required documentation.
- B. We shall provide preventive maintenance inspections, limited to the number shown on the front of this agreement during each twelve (12) month term of this Agreement. The date of the inspections during such twelve month periods, shall be at Our discretion. The services to be performed under the maintenance inspection are set forth in the RD protocol, a copy of which is on file at the principal office of RD. Such preventive maintenance calls may be scheduled by Our Service Department to occur concurrently with any emergency service call. We shall make emergency service calls for the instrument, limited to the number shown on the front of this Agreement, in response to Your calls with respect to any total or partial non-performance of the Instrument or any repairs and/or servicing necessary to ensure the instrument's proper care and working order. If we ship You any repair parts, We will pay the cost of freight each way.
- C. In the case of a total stoppage of all or part of the Instrument, We shall endeavor to provide emergency service within forty-eight (48) hours of Your call.
- D. The following provisions shall apply to any repairs, servicing, and/or Software support by Us.
1. All repairs, servicing, and/or Software support shall be performed during normal working hours, i.e. Monday through Friday from 8:00 a.m. to 5:00 p.m. (local time), excluding Roche Diagnostics. If You make a demand for Instrument service or repair outside of the normal service hours, You will be charged at our normal hourly rates, and You will provide Us with a purchase order for such repairs. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control.
 2. Upon each instance of repair, servicing, or Software support, as the case may be, We shall make a report indicating Our representative's name, the date, the hour of arrival and of departure, the duration of the visit, the purpose of the visit, a description of the work performed, any improvements to be made or that are planned and any other observations and/or suggestions. We shall leave a copy of each report with You.
 3. When it is deemed necessary by Us, We shall make a documented report to You including any fact that appears to have an impact on the proper functioning of the Instrument or Software and any particular measures required to maintain the Instrument and Software in good working order. We shall specifically note operating errors, faulty Customer maintenance and desired modifications.
 4. Software support rendered under this agreement shall be performed via telephone and/or modem connection, or, in the case of updates, via best delivery method. You will be responsible for the installation of updates within 30 days of receipt.
 5. We shall provide computer hardware troubleshooting for RD provided computer hardware only, and said computers are under the original manufacturer warranty or service agreement, and, if We deem necessary, We shall dispatch a manufacturer service representative.
- E. Our obligations shall not include the following:
1. Provision of reagents, accessories or consumable items, such as printer paper, fuses, photometric lamps, probes, cuvettes, etc., or any other items identified in the Operator Manual as consumable supplies, which are consumed or required to make the required repair or perform a preventive maintenance.
 2. Services such as the painting of the Instrument and integration of the Instrument or Software with equipment not provided or installed by RD, e.g. computer equipment not sold or distributed by RD.
 3. Peripheral devices (washers, computers used to link more than one (1) analyzer, etc.) which are not an incorporated part of the analyzer, which are sold by Roche Diagnostics are not covered by service agreements.
 4. Water equipment, external computers, un-interruptible power supplies, power conditioners and other accessories external to the Instrument are not covered by service agreements.

 4/16/10
Customer Initials & Date

Service Agreement Terms and Conditions**IV. CUSTOMER OBLIGATIONS**

- A. You agree to use the Instrument and Software in strict accordance with Our operating instructions and software license agreement, to permit servicing, repair, and software support work by Our personnel only, and to obtain Our written consent prior to connecting the Instrument to any other equipment or using non-RD equipment and/or accessories with the Instrument, or utilizing the Software with any other equipment. You further agree not to install any software not provided by Us.
- B. You agree You will not install non-Roche supplied software.
- C. You agree to use the Instrument and Software in an appropriate location and with electrical connections that correspond to the electrical supply specifications of the hardware manufacturer. You will protect the Instrument and associated Hardware from all adverse elements, such as dirt, dust and liquids of any kind.
- D. You will allow Our personnel free access to operating locations of any Instrument and Software to be serviced, repaired, maintained or supported. You agree to provide adequate space around the Instrument and adequate modem connection or network to the Software. In turn, We will respect all Your internal operating procedures of which You advise Us as well as general security instructions.

V. EXCLUSIONS FROM COVERAGE

Your payments under this Agreement do not cover repairs or Software support which may not be imputed to the manufacturer or to RD, including in particular, and without limiting the generality of the foregoing:

- A. Repairs or Software support required to remedy breakdown or damage which results from operator errors, abnormal or unapproved uses, unauthorized installed software or software updates, acts of third parties, viruses, faulty electrical connections, fluctuations or failures in air conditioning, heating or cooling systems and electrical power failures.
- B. Repairs or Software support required to remedy breakdown or damage which results from force majeure, including natural disasters such as fire, flood, earthquake, wind damage, tornadoes and lightning, and/or acts of violence, such as strikes, riots, sabotage, demonstrations, acts of terrorism, war, civil war, acts of public authorities and all other acts beyond Our reasonable control or the reasonable control of the equipment manufacturer.
- C. Repairs or Software support required to remedy breakdown or damage caused by unauthorized installed software or updates.
- D. Repairs or Software support required to remedy breakdown or damage caused by defects or malfunctions of any external computer hardware or connections to RD equipment, or any external water supply equipment, un-interruptible power supplies, power conditioners, or any other external connections to RD equipment.
- E. Normal daily, weekly, monthly, quarterly and semi-annual maintenance services to be provided by You such as the replacement of fuses, lamps, tubes, reagents and probes, as defined in the Operator Manual or Customer Bulletins. We will provide such training upon installation of the RD equipment.
- F. Repairs required to remedy problems due to improper completion of, or the lack of normal operator daily, weekly, monthly, quarterly and semi-annual maintenance service as identified in the Instrument Operator Manual.
- G. Repairs required to remedy problems due to use of accessories, products, and/or software or software updates not supplied or approved by Us.
- H. In the event We are called upon to perform repairs such as those listed in A, B, C, D, E, F and/or G above, the following provisions shall apply:
 1. We shall compile detailed cost estimates describing the work to be performed, the number and cost of supplies and parts to be provided, the expected time to completion, the hourly rate and other details and conditions of the repairs.
 2. You will provide Us with a purchase order for such repairs and/or Software support. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control. Repairs and Software Support described in this section shall be billed separately.

VI. SPECIAL SERVICE

- A. Service work of a special nature involving calls to move equipment or hardware, modify units for special applications and accessories, have on-site software support, etc., will be quoted on an individual basis. This quote may include air fares, preparatory time (e.g., time required to develop/modify customer software parameters/code at a location remote from the customer site), and associated travel expenses from outside the immediate area if required. An estimate of any special services expenses shall be submitted to and approved by Customer prior to completion of the service event.
- B. The selection, acquisition, and service of external devices is Your responsibility. We will only be responsible for servicing Our instruments and software up to the communications port for linking to a computer. Any hardware, cables, switches, or peripheral devices which are connected externally are not Our responsibility. Damage to the Instrument or Software as a result of hardware failure or connection to external devices shall invalidate this Service Agreement. In the event of a communications failure between an Instrument or Software and a host or related computer, You may contact the Technical Support Center for help isolating the cause. If the cause cannot be identified, Our Field Service Representative may be dispatched at Your request. If the source of failure is determined to be with hardware or software that is external to the instrument, the service call shall be invoiced at Our then prevailing rates regardless of Service Agreement. On-Site support for Software or Hardware shall be invoiced at Our then prevailing rates.

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Customer Initials & Date

- C. The following provisions shall apply to any special service of an Instrument, Software or Hardware pursuant to this section.
1. You shall give Us at least one (1) month advance written notice of any request for special service. It shall be Your responsibility to provide transportation and personnel assistance necessary to properly relocate the Instrument and/or Hardware if applicable.
 2. A detailed cost estimate shall be submitted by Us for any special service, including the details of the service, the cost of the special service and any other pertinent information.
 3. Upon receiving an agreement regarding the special service, You shall forward a purchase order to Us for the special service to be performed. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control. All special service requests are subject to final approval by Us.

VII SOFTWARE UPDATES

We may be required to update the Software in order to improve its use and reliability. Such updates shall be covered by this Agreement. Updated Software shall be subject to this Agreement in all respects. Updates shall not extend the defined Agreement coverage period.

VIII. INSTRUMENT MODIFICATIONS

We may be required to modify the Instrument in order to improve its use and reliability. All such modifications shall be the subject of a detailed cost estimate by Us and shall be assented to by You by submitting a purchase order to Us. Any terms and conditions of Your purchase order that conflict with the terms of this Agreement are hereby rejected and the terms of this Agreement shall control. All modification work shall be billed separately except for modifications required to improve use or reliability which occur during the one (1) year warranty period, which shall be free. Modified Instruments shall be subject to this Agreement in all respects. Modifications shall not extend the normal warranty period.

IX. DEFAULT

Each of the following is a "Default" under this Agreement: (a) You fail to provide payment of any sum to be paid hereunder within 45 calendar days of its due date; (b) You do not perform any of Your other obligations under this Agreement or in any other agreement with Us and this failure continues for 45 calendar days after We have notified You of Your non-performance; (c) You become insolvent, You dissolve or are dissolved, or You assign Your assets for the benefit of Your creditors, or enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) any guarantor of this Agreement dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed in clause (c) above; or (e) You offer products purchased or received under this Agreement or any other agreement with Us for resale.

A. Abusive and repetitive requests by You for service, repair, support, or parts shall entitle Us to terminate this Agreement via the following procedure.

1. We shall inform You of the nature of such abuse and corroborate the same with incidences of unnecessary trips or request for Software support, etc.
2. In addition to such corroboration, We shall provide You with thirty (30) days written notice of Our intent to terminate the Agreement and the Agreement shall so terminate at the end of said thirty-day period.

B. REMEDIES

If a Default occurs, We may do one or more of the following: (a) We may cancel or terminate this Agreement or any or all other agreements that We have entered into with You; (b) We may require You to immediately pay Us, as compensation for loss of Our bargain and not as a penalty, a sum equal to (i) the Service Agreement Payments, and any other amounts owing under this Agreement at the time of default, (ii) the present value of all unpaid Service Agreement Payments for the remainder of the term discounted at 5% per year, compounded monthly, plus (iii) all other amounts due or that become due under this Agreement; (c) We may cease providing Service under this Agreement or any other Agreements We have entered into with You; (d) We may exercise any other right or remedy available at law or in equity. YOU AGREE TO PAY ALL OF OUR COSTS OF ENFORCING OUR RIGHTS AGAINST YOU, INCLUDING REASONABLE ATTORNEYS' FEES. Remedies would comply with any applicable federal and state laws.

X. INDEMNITY

You agree to indemnify Us from all liabilities arising from Your misuse of the Equipment and/or Software, as described in the Certification Statements and herein.

XI. PRICE/PAYMENT TERMS

- A. After the first 24 months from the commencement of this Agreement, we may adjust each selected service price once annually which will require a new agreement to be signed. This price includes the cost of traveling, labor and providing of necessary warranted parts except as noted on the front of this document; it further includes the cost of software support and RD required software updates except as noted on the front of this Agreement. You are responsible for any state and local sales taxes that may apply to this Agreement and agree to pay when due, either directly or by reimbursing us, such taxes.
- B. The payment required hereunder shall be payable at the beginning of each service period upon receipt of an invoice. All payments are due net thirty (30) days from Our invoice date. Customer agrees to comply with the California Prompt Payment Act, GS 927.


Customer Initials & Date

Service Agreement Terms and Conditions

- C. The prices for special services shall be determined from detailed and descriptive estimates. Such estimates shall include all essential elements in the calculation of the price and shall include in particular the estimated number of work hours required, the hourly billing rates and a list of supplies as well as prices or any other factors usually mentioned in regard to such services.
- D. In the event that the legislature in Your state does not appropriate funds for Services or there are no funded appropriations from which payment can be made, You may, upon thirty (30) days written notice to RD, cancel this agreement.

XII TERM AND TERMINATION

The term of this Agreement shall be for the term set forth on the front of this Agreement, beginning on the Commencement Date. In the event of a material breach of this Agreement by Us, You may terminate this Agreement upon ninety (90) days written notice to Us; provided, however, that such notice shall be ineffective if We cure such breach within the ninety (90) day notice period. All of Your obligations must be current to terminate this Agreement prior to completion of the Initial Term.

XIII RENEWAL

Upon termination of this Agreement, We may, in Our discretion, renew this Agreement, decide not to renew this Agreement, or offer alternative coverage and/or pricing.

XIV. WARRANTY/LIMITATION OR REMEDY/INDEMNITY

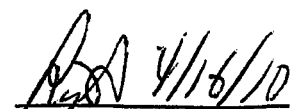
- A. We warrant that the services provided under this Agreement will be free from defects of workmanship for a period of thirty (30) days from the date of service.
- B. WE HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE INSTRUMENT, SOFTWARE, SOFTWARE SUPPORT, SOFTWARE UPDATES, PARTS AND SERVICES PROVIDED, EXCEPT THE LIMITED WARRANTY SET FORTH ABOVE. WE ARE NOT LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF THE USE OF THE CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES AND DOWN-TIME COSTS, RESULTING FROM OR ARISING IN CONNECTION WITH THE PERFORMANCE, DELAY IN PERFORMANCE OR NONPERFORMANCE OF ANY TERMS OR CONDITIONS OF A ROCHE DIAGNOSTICS WARRANTY OR SERVICE AGREEMENT OR FROM THE USE OR MISUSE OF THE INSTRUMENT OR SOFTWARE (OR ANY SUBSTITUTE THEREFORE) OR ANY MATERIAL OR WORKMANSHIP DELIVERED HEREUNDER, EVEN IF WE HAVE BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. YOUR EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE RE-PERFORMANCE OF ANY SERVICE WHICH PROVES TO BE DEFECTIVE, UNTIL THE DEFECT IS REMEDIED. Neither party shall be liable to the other party for incidental, indirect, special or consequential damages. Each party agrees to indemnify the other part from all liabilities arising from the other party's negligence or willful misconduct or failure to perform its duties or obligations, except to the extent caused by the negligence or willful misconduct of the party seeking indemnification. To the extent permitted by law, you agree to indemnify Roche from all liabilities arising from your misuse.

XVI MISCELLANEOUS

You agree that the laws of the State of California shall govern this Agreement and You consent to the exclusive jurisdiction of and venue in any court located within the State of California. You expressly waive Your rights to trial by jury. Should any provision of this Agreement be held invalid, ineffective or unenforceable, the remaining terms shall remain in full force and effect. Our obligations under this Agreement shall be suspended in the event that We are hindered or prevented from complying with Our obligations because of labor disturbances, wars, fires, storms, accidents, interferences or any other cause beyond Our reasonable control, as described in section V above. You agree that the terms and conditions in this Agreement with all Roche Diagnostics addenda, make up the entire agreement between You and Us with respect to the subject matter hereof. No waiver or modification to any term of this Agreement is valid unless it is in writing and signed by Us and You. You agree that We are authorized to supply missing information or correct obvious errors in this Agreement. If We delay or fail to enforce any of Our rights under this Agreement, We will be able to enforce Our rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail, certified with return receipt requested, addressed to the party receiving the notice at its address shown on the front of this Agreement. All of Our rights shall survive the term of this Agreement. The titles and headings used in this Agreement are for convenience only and shall not be used to interpret the term and conditions of this Agreement.

XVII INSURANCE:

RDC has made a business decision to self insure their exposure to product liability and completed operations risks. You may obtain evidence of Contractor's insurance coverage from the Memorandum of Insurance on the following website: <http://www.marsh.com/moi?client=A699>. The Memorandum of Insurance on this website will serve as evidence that Contractor is purchasing insurance protection from financially sound insurers at prudent retention levels or has elected to self insure on some of its exposures, and will continue at the same or higher level of coverage.


Customer Initials & Date

SEPARATOR SHEET

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WARRANTY SERVICE AGREEMENT TERMS AND CONDITIONS

I. PURPOSE

The purpose of this Agreement is to set forth the understandings of the parties of the terms and conditions applicable to the servicing of the "Instrument" installed by RDC at the Customer's location.

II. APPLICATION

This Agreement shall be applicable only to instruments distributed and installed by RDC.

III. RDC OBLIGATIONS

A. RDC shall service the Instrument for 12 months from the effective date of the Instrument Agreement. For the purposes of this Agreement, the terms "service" and "maintenance" shall include labor time, travel time, repairs and replacement parts.

B. In the case of a total stoppage of all or part of the Instrument, RDC shall endeavor to provide emergency service within forty-eight (48) hours of the Customer's call. Where it appears to the service representative that the nature and gravity of the stoppage will cause a delay in performance in excess of forty-eight (48) hours, RDC shall immediately inform the Customer as to the nature and gravity of the problem and the anticipated time necessary to put the instrument in working order.

C. The following provisions shall apply to all repairs and/or servicing by RDC:

1. All repairs and/or servicing shall be performed during normal working hours, i.e., Monday through Friday from 9:00 A.M. to 5:00 P.M. If the Customer makes a demand for service outside of the normal service hours, RDC shall use its best efforts to provide such service.

2. The length of time required for repairs and/or servicing shall always be kept at a minimum. Repairs and servicing shall be effected in a fashion which results in the least disruption to the operation of the instrument.

3. Upon each instance of repair or servicing, as the case may be, the RDC service representative shall make a report indicating his or her name, the date, the hour of arrival and of departure, the duration of the visit, the purpose of the visit, a description of the work performed, any improvements to be made or that are planned and any other observations and/or suggestions. Each report shall be signed by the RDC service representative and the Customer. The Customer shall retain one copy.

4. When it is deemed necessary, RDC shall make a written report to the Customer including any fact which appears to have an impact on the proper functioning of the Instrument and any particular measure required to maintain the Instrument in good working order. RDC shall specifically note operating errors, faulty Customer maintenance, and desired modifications.

D. The obligations of RDC shall not include the following:

1. The providing of consumable items, such as printer paper, magnetic tape, cables, reagents, cuvettes, seals, accessories to pipettes, and in general any RDC consumable products.

2. Services such as the painting of the Instrument and the integration of the Instrument with equipment not provided or installed by RDC, e.g., computer equipment not sold by or distributed by RDC.

E. RD agrees to comply with the terms and conditions of the Business Addendum Agreement attached hereto and made a part hereof.

IV. CUSTOMER OBLIGATIONS

A. The Customer agrees to use the Instrument in strict accordance with RDC operating instructions to permit service and repair work by RDC personnel only, and to obtain the written consent of RDC prior to connecting the Instrument to any other equipment or using non-RDC equipment and/or accessories with the instrument.

B. The Customer agrees to use the Instrument in any appropriate location and with electrical connections which correspond to the electrical supply specifications of the manufacturer. The Customer shall protect the Instrument from all adverse elements such as dirt, dust and liquids of any kind.

C. The Customer agrees to allow RDC personnel free access to operating locations of any Instrument to be serviced and to provide adequate space around the Instrument, during regular business hours. In turn, RDC agrees to respect all internal operating procedures of the Customer of which it is advised as well as general security instructions.

V. EXCLUSIONS FROM COVERAGE

This Agreement shall not apply to repairs which may not be imputed to the manufacturer or to RDC, including in particular, and without limiting the generality of the foregoing:

A. The repair of breakdowns or damages which result from operator errors, lack of operator maintenance, abnormally or unapproved uses, acts of third parties, faulty electrical connections, fluctuations or failures in air condition, heating or cooling systems and electrical power failures.

B. The repair of breakdowns or damages caused by force majeure, including natural disasters such as fire, flood, earthquake, wind damage and lightning, strikes, riots sabotage demonstrations, acts of terrorism, war, civil war, acts of public authorities, and all other acts beyond the reasonable control of RDC or the manufacturer.

C. The repair of breakdowns or damages caused by defects or malfunctions of any external computer hardware attached to the instrument.

D. Normal daily, weekly, monthly and semi-annual maintenance services to be provided by the Customer such as replacement of fuses, lamps, tubes, reagents and probes. RDC shall provide training on all such normal daily, weekly, monthly and semi-annual maintenance services at the time of installation.

E. In the Event that RDC is called upon to perform repairs such as those listed in A, B, C and D above, the following provisions shall apply:

1. RDC shall compile detailed cost estimates describing the work to be performed, the number and cost of supplies and parts to be provided, the expected time to completion, the hourly rate and other details and conditions of the repairs.

2. Approval of the type of repairs described in this section shall be given by the Customer submitting a purchase order to RDC and shall be billed separately from other repair and service work performed under this Agreement. The repairs and/or recondition described in this section are not obligatory and may not be accepted by the Customer. In such case, however, RDC may require that the subject instrument(s) cease to be covered by this Agreement. Final approval for all determinations pursuant to this section is at the discretion of the RDC National Service Manager.

VI. INSTRUMENT MODIFICATIONS

RDC may be required to effect modifications to an Instrument in order to improve its use and reliability. All such modifications shall be the subject of a detailed cost estimate by RDC and shall be assented to by the Customer by submitting a purchase order to RDC. All modification work shall be billed separately except modifications required to improve use or reliability which occur during the one (1) year warranty period, which shall be free. Modified Instruments shall be subject to this Agreement in all respects. Modifications shall not extend the normal warranty period.

VII. TERMS AND TERMINATION

The term of this Agreement shall be for 12 months from the effective date of the Instrument Agreement.

A. Abusive and repetitive requests by the Customer for service and/or parts shall entitle RDC to terminate this Agreement via the following procedure:

1. RDC shall inform the Customer of the nature of such abuse and corroborate the same with incidences of unnecessary trips, etc.

2. In addition to such corroboration, RDC shall provide the Customer with thirty (30) days written notice of its intent to terminate the Agreement and the Agreement shall so terminate at the end of said thirty-day period.

B. RDC reserves the right to suspend its performance hereunder during any period in which Customer's accounts with RDC are not current. In the event of such suspension, RDC shall establish such conditions for reinstatement as it deems appropriate to assure the Instrument is restored, at Customer's expense, to a condition at least as good as the condition it was in prior to the suspension.

C. RDC further reserves the right to terminate this Agreement in the event Customer fails to cure any breach hereof within twenty (20) days of notice of such breach by RDC, in writing.

VIII. WARRANTY/LIMITATION REMEDY/INDEMNITY

A. LIMITED WARRANTY - RDC warrants to the Customer that the material and workmanship delivered under this Agreement will be free from defects for a period of thirty (30) days from the date of delivery of such material or workmanship or, if the material or workmanship is installed by a RDC service representative from the date of such installation.

B. DISCLAIMER OF WARRANTY - RDC HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE MATERIALS OR WORKMANSHIP DELIVERED HEREUNDER, EXCEPT THE LIMITED WARRANTY SET FORTH IN SECTION IX (A) ABOVE.

C. LIMITATIONS OF REMEDY - THE PARTIES HERETO AGREE THAT THE CUSTOMER IS ENTITLED ONLY AS ITS EXCLUSIVE REMEDY FOR DEFECTIVE MATERIAL OR WORKMANSHIP FURNISHED THE CUSTOMER UNDER THIS AGREEMENT, TO THE REPAIR OR REPLACEMENT BY RDC OR SUCH DEFECTIVE MATERIAL OR WORKMANSHIP.

D. 1. NO LIABILITY FOR FORCE MAJEURE - RDC SHALL NOT BE LIABLE FOR ANY DAMAGE TO THE CUSTOMER WHICH RESULTS FROM NONPERFORMANCE OR DELAY IN PERFORMANCE OF ANY TERMS OR CONDITIONS OF THIS AGREEMENT CAUSED BY ACTS OF GOD, LAWS, REGULATIONS OR OTHER ACTS OF GOVERNMENT, FREIGHT EMBARGOES, ACCIDENTS OR OTHER DELAYS IN TRANSPORTATION, LABOR SHORTAGES, STRIKES OR OTHER LABOR PROBLEMS, INABILITY TO SECURE MATERIAL OR SUPPLIES OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF RDC.

2. NO LIABILITY FOR CONSEQUENTIAL DAMAGE - RDC SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES AND DOWNTIME COSTS, RESULTING FROM OR ARISING IN CONNECTION WITH THE PERFORMANCE, DELAY IN PERFORMANCE OR NONPERFORMANCE OF ANY TERMS OR CONDITIONS OF THIS AGREEMENT OR FROM THE USE OR MISUSE OF THE INSTRUMENT (OR ANY SUBSTITUTE THEREFORE), AS DESCRIBED IN THE CERTIFICATION STATEMENTS OR HEREIN, OR ANY MATERIAL OR WORKMANSHIP DELIVERED HEREUNDER, EVEN IF RDC HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

IX. NOTICE

Any notice given or required pursuant to the terms of this Agreement shall be delivered via certified or registered mail (return receipt requested) and shall be deemed effective five (5) days after the date of mailing, postage prepaid and sent to the address of the parties set forth above, unless notice of a different address is provided.

X. GENERAL

A. ENTIRE AGREEMENT. This Agreement shall constitute the final, complete and exclusive written expression of all terms and conditions agreed upon by the parties hereto in regard to the servicing of the Instrument. Any statement, terms or conditions of any purchase order submitted by the Customer in respect to the services to be supplied hereunder, which are in addition to or differ from the terms and conditions of this Agreement are rejected and shall be given no force or effect.

B. GOVERNING LAW. This Agreement is governed by the internal laws of the State of California without regard to conflicts of laws principles. Customer hereby irrevocably consents to the personal jurisdiction of the Federal and State courts located in California. Customer waives trial by jury in any action hereunder.

C. SUCCESSORS INTERESTS. This Agreement shall be binding on RDC and Customer and their respective successors and assigns, and shall inure to the benefit of RDC and Customer and the successors and assigns.

XI. INSURANCE

RDC has made a business decision to self insure their exposure to product liability and completed operations risks. You may obtain evidence of Contractor's insurance coverage from the Memorandum of Insurance on the following website: <http://www.marsh.com/moi?client=A699>. The Memorandum of Insurance on this website will serve as evidence that Contractor is purchasing insurance protection from financially sound insurers at prudent retention levels or has elected to self insure on some of its exposures, and will continue at the same or higher level of coverage.

SEPARATOR SHEET

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BUSINESS ASSOCIATE EXHIBIT

Business Associate (BA) shall comply, to the extent required by law, with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (including but not limited to Title 42, U.S.C. Section 1320d et seq.) and its implementing regulations (including but not limited to Title 45, Code of Federal Regulations (CFR), Parts 142, 160, 162 and 164), hereinafter collectively referred to as the "Privacy Rule and Security Standards."

If COUNTY becomes aware of a pattern of activity that violates the HIPAA Privacy Rule, and reasonable steps to cure the violation are unsuccessful, the COUNTY may terminate the Agreement, or if not feasible; report the problem to the Secretary of the US Department of Health and Human Services.

COUNTY and BA desire to facilitate the billing and/or transfer of protected health information (PHI), as defined in 45 CFR, Section 164.504, by electronically transmitting and receiving data in agreed formats and to assure that such transactions comply with relevant laws and regulations.

1. Definitions

Terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms used in the Privacy Rule.

1.1 "Business Associate"(BA) shall mean CONTRACTOR as identified in this Agreement.

1.2 "Covered Entity" shall mean Stanislaus County, Health Services Agency (COUNTY).

1.3 "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

1.4 "Privacy Rule" shall mean the Standards for Privacy of individually identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.5 "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR, Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.6 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, Subpart C.

1.7 "Physical Safeguards" are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

1.8 "Security or Security measures" encompass all of the administrative, physical, and technical safeguards in an information system.

1.9 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Operations

2.1 **Document Standards.** Each party may transmit to, or receive from, the other party, either electronically or using other media, PHI and/or individually identifiable health information, as defined in 42 U.S.C., Section 1320d, as it pertains to the provision of services under this Agreement. All documents shall be transmitted in accordance with the standards set forth in the Health Services Agency's Privacy Policy.

2.2 **System Operations.** Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing necessary to effectively, reliably, and confidentially transmit and receive documents.

3. Electronic Transmissions

Documents shall not be deemed to have been properly received, and no document shall give rise to any obligation, until decrypted and accessible to the receiving party at such party's receipt counter as designated by regulation or policy.

4. Security Standards

4.1 BA shall ensure the implementation of safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits.

4.2 BA shall ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards;

4.3 BA is required to report to the covered entity any security incident of which it becomes aware.

4.4 BA shall make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary for purposes of determining the covered entity's compliance with the regulations.

4.5 Covered entity may terminate the contract if the covered entity determines that the BA has violated a material term of the contract.

5. Use and Disclosure of Protected Health Information

5.1 Except as otherwise provided in this Business Associate Exhibit, BA may use or disclose PHI to perform functions, activities or services for or on behalf of the COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the COUNTY or the minimum necessary policies and procedures of the COUNTY.

5.2 Except as otherwise limited in this Business Associate Exhibit, BA may use and disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

5.3 Except as otherwise limited in this Business Associate Exhibit, BA may use PHI to provide data aggregation services related to the health care operation of COUNTY.

5.4 BA shall not use or further disclose PHI other than as permitted or required by this Business Associate Exhibit, or by law.

5.5 BA will promptly report, in writing, to COUNTY any use or disclosure of a PHI not provided for by this Exhibit within seven (7) days of the time BA becomes aware of such use or disclosure, pursuant to 45 CFR, Section 164.528.

5.6 BA shall document such disclosure of PHI and information related to such disclosures as would be required for the COUNTY to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

5.7 BA shall provide to COUNTY or an individual, within seven (7) days, information collected in accordance with Title 45, CFR, Section 164.528, to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

6. Agents and Subcontractors of BA

BA shall ensure that any agent, including subcontractor, to which the BA provides PHI received from, or created or received by BA on behalf of the COUNTY, shall comply with the same restrictions and conditions that apply through this Business Associate Exhibit to the BA with respect to such information.

7. Access to PHI

7.1 BA shall provide access, within seven (7) days of such a request, to the COUNTY or, as directed by the COUNTY, to PHI in a designated record set to an individual in order to meet the requirements of Title 45, CFR, Section 164.524.

7.2 BA shall, within seven (7) days of such a request, provide individual patient or their legal representative with access to PHI contained in BA's records, pursuant to 45 CFR, Section 164.504 (e)(2)(F).

8. Amendment(s) to PHI

BA shall make any amendment(s) to PHI in a designated record set that the COUNTY directs or at the request of the COUNTY or an individual within seven (7) days of such request in accordance with Title 45, CFR, Section 164.526.

9. Records Available

BA shall make its internal practices, books, and records related to the use, disclosure, and privacy protection of PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY, available to the COUNTY or to the Secretary of HHS for purposes of the Secretary determining compliance with the Privacy Rule, in a time and manner designed by the COUNTY or the Secretary of HHS.

10. Retention, Transfer and Destruction of Information

10.1 Upon termination of this Agreement for any reason, BA shall retain all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY in a manner that complies with the Privacy Rule. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.2 Prior to termination of this Agreement, the BA may be required by the COUNTY to provide copies of PHI to the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA.

10.3 When the retention requirements on termination of the Agreement have been met, BA shall destroy all PHI received from the COUNTY, or created or received by the BA on behalf of the COUNTY. This provision shall apply to PHI in possession of subcontractors or agents of the BA. BA, its agents or subcontractors shall retain no copies of the PHI.

10.4 In the event that BA determines that returning or destroying the PHI is not feasible, BA shall provide the COUNTY notification of the conditions that make destruction infeasible. Upon mutual agreement of the parties that the destruction of the PHI is not feasible, BA shall extend the protections of this Business Associate Exhibit to such PHI and limit further use and disclosures of such PHI for so long as BA, or any of its agents or subcontractors, maintains such PHI.

11. Force Majeure

No party shall be liable for any failure to perform its obligations in connection with any transaction or any document where such failure results from any act of nature or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure) that prevent such party from transmitting or receiving any documents.

12. Limitation of Damages

Other than specified in elsewhere, neither party shall be liable to the other for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.

13. Attorney-Client Privilege

Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by BA or COUNTY by virtue of this Subparagraph.

14. Interpretation

Any ambiguity in this Business Associate Exhibit shall be resolved to permit the COUNTY to comply with the Privacy Rule and Security Standards.

Stanislaus County Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354

BOARD OF SUPERVISORS
TRANSMITTAL
2010 MAY 18 P 1:05

TO: Qiagen, Inc.
19300 Germantown Road
Germantown, MD 20874

SUBJECT: Stanislaus County Health Services Agency

DATE: 5/18/10

We are sending you X attached under separate cover the following material:

| | | |
|---|---------------------------------------|--|
| <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Change Order | <input type="checkbox"/> Specifications |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Plans | <input type="checkbox"/> Computer Printout |
| <input type="checkbox"/> Prints | <input type="checkbox"/> Samples | <input type="checkbox"/> Updates |

| COPIES | DATE | DESCRIPTION |
|--------|---------|--|
| 1 | 4/30/10 | Fully-Executed Field Service Agreement |

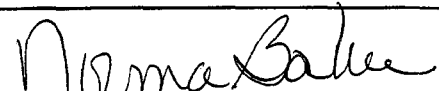
REMARKS:

For your files

Clerk of the Board: Item No. 2010-190 Dated: April 6, 2010

COPIES: Tom Flores, Auditor (Purchasing)
Liz King, Clerk of the Board
Patricia Hill Thomas
X 2.1.1 (1705)
X 15.79.6

SIGNED:


Norma Baker

Clear Form

Print Form

CONTRACT COVER SHEET

NEW CONTRACT INCREASE AMENDMENT # _____ (PO# _____ /Contract #23951)

PLEASE FORWARD COVER SHEET, WITH CONTRACT AND AMENDMENT (IF APPLICABLE), TO THE PURCHASING DIVISION.

CONTRACTOR:

QIAGEN, INC.

19300 GERMANTOWN ROAD

GERMANTOWN, MD 20874

DEPARTMENT: CEO

DIVISION: CAPITAL PROJECTS

PREPARED BY: NORMA BAKER

PHONE: 5-4375

DATE: MAY 18, 2010

NIGP CODE:

VENDOR NUMBER: 70894

BUSINESS ASSOCIATE: Y or N

CONTRACT DESCRIPTION: ROBOTIC WORKSTATION FOR PUBLIC HEALTH

| | -1- | -2- | -3- | -4- | -5- |
|--|-------------|-----|-----|-----|-----|
| LINE DESCRIPTION | | | | | |
| FUND <small>*REQUIRED</small> | 2074 | | | | |
| ORG <small>*REQUIRED</small> | 0061134 | | | | |
| ACCT <small>*REQUIRED</small> | 84870 | | | | |
| GL PROJ | | | | | |
| LOC | | | | | |
| MISC | | | | | |
| AMOUNT <small>*REQUIRED</small> (ENCUMBRANCE AMOUNT FOR CURRENT FISCAL YEAR) | \$16,898.80 | | | | |

***** IMPORTANT *****

CONTRACT EFFECTIVE DATE: 4/16/10 EXPIRATION DATE: 12/31/10

CERTIFICATE OF INSURANCE: REQUESTED _____ RECEIVED _____ DATE _____

ADOPTED BY THE BOARD: Y or N CURRENT-YEAR or RESOLUTION NO: ITEM #2010-190

TO BE PAID WITH FEDERAL FUNDS?: Y or N IF YES, EPLS CHECKED?: Y or N

NOTES: _____

***** THIS SECTION IS FOR PURCHASING DIVISION USE. *****

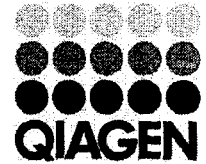
TYPE _____ REV # _____ MAX AMT \$ _____

AMENDMENT START DATE _____ AMENDMENT STOP DATE _____ SEND CONTRACT TO VENDOR Y or N

APPROVED BY: _____ ENTERED BY: _____ CONTRACT #: _____

DATE: _____ DATE: _____ PO #: _____

QUOTATION



QIAGEN Agreement # MH030910a

March 9, 2010

Mark Miller
Stanislaus County Public Health
1010 10th St, Suite 5400
95354 Modesto
USA

Delivery: 30-75 days ARO **F.O.B. Instrument:** Shipping Point - Freight Prepaid and Added **Prices Valid For:** 60 days **Terms:** Net 30 Days Upon Invoicing

| Item | Catalog # | Description | Unit Price | Qty | Extended Price |
|------|-----------|---|------------|-----|----------------|
| 1 | 9001292 | QIAcube (110V) Robotic workstation for automated purification of DNA, RNA, or proteins using QIAGEN spin-column kits, 1-year warranty on parts and labor | 15,058.80 | 1 | 15,058.80 |
| 2 | 9240377 | Installation, QIAcube The Installation, QIAcube facilitates the quick implementation of the QIAcube into the lab routine by minimizing the instrument start-up phase. It covers the hardware and software installation of the QIAcube instrument and provides the user with an introductory training on operation and user maintenance. The installation includes labor and travel costs. The performance of the installation process is documented on a GMP/GLP-compliant Field Service document. | 1,605.00 | 1 | 1,605.00 |

- Please note the following:
- System installation is not included unless specified above. If installation is purchased, QIAGEN will install the protocol, test the protocol, and backup the system software and protocol.
 - Instrument shipped upon availability. Actual delivery times may vary.
 - Payment due 30 days upon invoicing. QIAGEN will provide installation and introductory training upon delivery. If the Customer delays installation and/or introductory training for more than four weeks after delivery, payment for the instrument is due by the Customer.
 - This proposal is made contingent upon the acceptance by Customer without changes or modification of the provisions of this proposal including all insertions on the face hereof and of the QIAGEN terms and conditions of sales provided.

***Quoted Price: \$ 16,663.80**

*Shipping not included in quoted price

Mike Harrington
Molecular Diagnostic Sales Specialist
1-800-426-8157 ext. 22379

QIAGEN - Sample & Assay Technologies

Trans # 23951

SEPARATOR SHEET

(Intentionally left blank)

QUOTATION



QIAGEN Agreement # MH030910a

March 9, 2010

Mark Miller
 Stanislaus County Public Health
 1010 10th St, Suite 5400
 95354 Modesto
 USA

Delivery: 30-75 days ARO **F.O.B. Instrument:** Shipping Point - Freight Prepaid and Added **Prices Valid For:** 60 days **Terms:** Net 30 Days Upon Invoicing

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Mike Harrington
 Molecular Diagnostic Sales Specialist
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QIAGEN - Sample & Assay Technologies

Trans # 23051