



July 1, 2019

Senator Rick Girdler, Co-Chair
Representative Walker Thomas, Co-Chair
Capital Projects and Bond Oversight
Committee Legislative Research
Commission
Capital Annex Building - Room 34
702 Capital Avenue
Frankfort, Kentucky 40601

Re: Radon Del Medical Vision R C-Arm

Dear Senator Girdler and Representative Thomas:

Pursuant to KRS 45.760(5), the University of Kentucky hereby reports the purchase of medical equipment in excess of \$200,000. Money specifically budgeted and appropriated by the General Assembly for another purpose or program is not being used for the expenditures of this item.

The Radon Del Medical Vision R C-Arm will be used by the UKHC Good Samaritan Hospital Radiology. The equipment is a feature rich, mobile surgical system designed to perform a wide range of fluoroscopic applications. It offers refined movement capabilities, high resolution, and dose efficiency for procedures in surgery: orthopedics, urology; cardiology; and pain management. This equipment will be used to support intraoperative procedures in the operating room. Patients will benefit from dynamic visualization, which can visualize the smallest anatomical structures – improving interventional vascular and cardiac procedures. The cost is \$229,905 to be paid in cash with UK restricted funds.

Please advise if you have any questions or if you would like additional information.

Sincerely,


Angela Martin


Elizabeth Baker
Vice President for Financial Planning and Chief Budget Officer

cc: Elizabeth Baker
Teresa Centers
William Coleman

see blue.

July 1, 2019

Senator Rick Girdler, Co-Chair
Representative Walker Thomas, Co-Chair
Capital Projects and Bond Oversight
Committee Legislative Research
Commission
Capital Annex Building - Room 34
702 Capital Avenue
Frankfort, Kentucky 40601

Re: Mass Spectrometer

Dear Senator Girdler and Representative Thomas:

Pursuant to KRS 45.760(5), the University of Kentucky hereby reports the purchase of medical equipment in excess of \$200,000. Money specifically budgeted and appropriated by the General Assembly for another purpose or program is not being used for the expenditures of this item.

The Mass Spectrometer will be used by the UKHC A.B. Chandler Hospital. This instrument is one of the most crucial instruments in our hospital's laboratory as this is the primary method of organism identification (bacteria, fungus, yeast and Mycobacteria). The equipment offers a new "lifetime" laser that can fire 500 million laser shots compared to 60 million shots on the current instrument model. This update will benefit patients by allowing the lab to get pathology results returned in less time. The cost is \$225,000 to be paid in cash with UK restricted funds.

Please advise if you have any questions or if you would like additional information.

Sincerely,


Angela Martin A.P. Elizabeth D. Baker

Vice President for Financial Planning and Chief Budget Officer

cc: Elizabeth Baker
Teresa Centers
William Coleman

see blue.

July 1, 2019

Senator Rick Girdler, Co-Chair
Representative Walker Thomas, Co-Chair
Capital Projects and Bond Oversight Committee
Legislative Research Commission
Capital Annex Building - Room 34
702 Capital Avenue
Frankfort, Kentucky 40601

Re: Roche Cobas 6000 Analyzer

Dear Senator Girdler and Representative Thomas:

Pursuant to KRS 45.760(5), the University of Kentucky (UK) hereby reports the purchase of medical equipment in excess of \$200,000, Roche Cobas 6000 Analyzer. Money specifically budgeted and appropriated by the General Assembly for another purpose or program is not being used for the expenditures of this item.

The Cobas 6000 Analyzer series automation line equipment will be located at UK HealthCare A.B. Chandler Hospital and will handle patient improvements by - 1) improved time to result – enhances lab availability for chemotherapy and infusion patients; and 2) ability to increase in-house testing menu – serve a wider range of patients. The equipment cost is \$3,035,266.81 paid in cash with UK restricted funds.

Please advise if you have any questions or if you would like additional information.

Sincerely,


Angie Martin
Vice President for Financial Planning and Chief Budget Officer

AM/ls

cc: Elizabeth Baker
Teresa Centers
William Coleman

see blue.

July 18, 2019

Senator Rick Girdler
Representative Walker Thomas
Capital Projects and Bond Oversight Committee
Legislative Research Commission
Capital Annex Room 34
Frankfort, KY 40601

RE: Equipment Purchase – LSR Fortessa X20 SORP Promo

Dear Senator Girdler and Representative Thomas:

In accordance with provisions of KRS 45.760(5), I am writing to report the future purchase of equipment. I hereby certify that all terms and conditions of the subsections (a), (b) and (c) have been met.

The Department of Medicine will be spending \$271,260.93 for a LSR Fortessa X20 SORP Promo. The system will enable research investigators to quantify changes in leukocytis population subsets and functions. Current equipment will become obsolete and no longer serviced in year 2020. NIH awarded a grant to cover the cost of the equipment.

Please contact Kim Noltemeyer at 852-8186, if you have any questions regarding this purchase.

Sincerely,



Mark Watkins
Senior Associate Vice President of Operations
University of Louisville

cc: President Neeli Bendapudi

Dan Durbin, CFO
Jason Hellmann, Ph.D.
Shaun McKiernan
Carla Wright (OSBD)

Purchase of Capital Equipment Greater Than \$200,000

The following information is required to make a request to the State to purchase equipment greater than \$200,000. A copy of the vendor equipment quote will also need to be attached to the request.

- A. Description of the item:
LSR Fortessa X20 SORP Promo
- B. The purpose for which it will be used:
The requested LSR Fortessa X20 SORP Promo will enable research investigators to quantify changes in leukocytic population subsets and function. This instrument will support the progress of millions of dollars in NIH (i.e., federal) funding.
- C. The necessity for the purchase:
The current instrument will become obsolete and no longer serviced in year 2020. Dozens of investigators and millions of dollars in federal grants depend on this system. I received a grant from the NIH to purchase this piece of equipment. All of the money needed to purchase this instrument is supplied in the NIH grant.
- D. The amount expended for the purchase from each source of funds used:
The entire amount of the purchase is covered by a federal grant that is specifically dedicated to purchasing this piece of equipment. I received a grant from the NIH to purchase this piece of equipment. All of the money needed to purchase this instrument is supplied in the NIH grant.
- E. Will the money being used for the purchase jeopardize any existing program?
No.
- F. The purchase will not require the use of any current general funds specifically dedicated to existing programs.
This statement is correct. I received a grant from the NIH to purchase this piece of equipment. All of the money needed to purchase this instrument is supplied in the NIH grant.
- G. Funds are available for the purchase and the method of financing the purchase will not require any additional appropriate of state funds.
This statement is correct. I received a grant from the NIH to purchase this piece of equipment. All of the money needed to purchase this instrument is supplied in the NIH grant.



Quotation Proposal #BDB 2019-33039 v1



Prepared Exclusively For:

UNIV LOUISVILLE

INSTRUMENTS

REAGENTS

CELL CULTURE

APPLICATIONS

SUPPORT



Becton, Dickinson and Company
BD Biosciences Business Unit
One Becton Drive
Franklin Lakes, NJ 07417
Tel: (855) 236-2772
Fax: (408) 954-2736
www.bdbiosciences.com

06-18-2019

Jason Hellmann
UNIV LOUISVILLE

580 S PRESTON ST BAXTER II BLDG RM 204
LOUISVILLE, KY 40202-0000

Re: Quotation Proposal #BDB 2019-33039 v1

Dear Jason Hellmann,

Thank you for the opportunity to discuss BD products with you. I have enclosed the quotation for this product.

We at BD Biosciences are confident that our solutions will provide both superior performance and success for your current and future research needs. Additionally, our portfolios are supported by experienced and efficient Customer Training and Field Support groups ensuring an exemplary customer experience.

Please review the enclosed quotation with your requested item(s) for accuracy and note the ordering guidelines listed below.

Orders may be placed directly through BD Biosciences via Email or Fax:

- Email: InstrumentOrders@bd.com.
- Fax: (408) 954-6306

Please note the following PO Requirements:

- Vendor Name: Becton, Dickinson & Company, 1 Becton Drive, Franklin Lakes, NJ 07417.
- The Tax Exemption Certificate, if applicable, must use the name Becton, Dickinson & Company.
- Data Universal Number System (DUNS) #: BD Biosciences 024230633
- Business Size: Large
- Tax ID: 22-0760120

Thank you again for the opportunity to work with you and your lab - Please feel free to contact me directly for further questions or assistance.

Kind Regards,

John Stukheil

Spec 2, Direct Sales - Capital Equipment

john_f_stukheil@bd.com



Quotation Proposal #BDB 2019-33039 v1

Sold-to-Account: 1001077337	Ship-to-Account: 1001628923
UNIV LOUISVILLE	UNIV LOUISVILLE
SERVICE COMPLEX 212	580 S PRESTON ST BAXTER II BLDG RM 204
LOUISVILLE KY, 40292-0000	LOUISVILLE KY, 40202-0000

Payment Terms:	Net 30	Quote Valid From:	06-18-2019
Inco Terms:	FOB Origin Prepaid & Add	Quote Valid To:	08-17-2019

Item #	Part #	Description	Qty	List Price	Disc %	Net Price
1.0	LSRFortessa X20 SORP Promo		1	\$295,576.03	10.00	\$266,018.43
1.1	700001222	Assy Base LSRFortessa X-20 SORP	1	"Included"	0	"Included"
1.2	1147 SO 65832517	SO Laser SETO B60R100YG50V50	1	"Included"	0	"Included"
1.3	1147 SO 658326PB1	2 Det Pkg Poly Blue SSC: 488/10, FITC/BB515; (505LP; 530/30),PerCP Cy5.5: (690LP; 710/50)	1	"Included"	0	"Included"
1.4	1147 SO 658326PR2	3 Det Pkg Poly Red APC: 670/30), Alexa 700 (690LP; 710/50), APC Cy7: (750LP; 780/60)	1	"Included"	0	"Included"
1.5	1147 SO 658326PV6	6 Det Poly Violet BV421 (450/50), BV510 (505LP; 525/50), BV605 (600LP; 610/20), BV650 (635LP; 670/30), BV711 (690LP; 710/50), BV750 (750LP; 780/60)	1	"Included"	0	"Included"
1.6	1147 SO 658326YG4	4 Det Poly YG PE (586/15), PE CF594 (600LP; 610/20), PE Cy5 (635LP; 670/30), PE Cy7 (750Lp; 780/60)	1	"Included"	0	"Included"



1.7	661968	Workstation Bundle Z240SFF LSR Fortessa	1	"Included"	0	"Included"
1.8	652792	NEC 23 Inch LED	2	"Included"	0	"Included"
1.9	649908	Option FACSFlow Supply Sys LSRFortessa	1	\$7,025.00	100.00	\$0.00
1.10	647701	BD HTS LSRFortessa	1	\$45,000.00	100.00	\$0.00
1.11	99-30211-00	BD FACSflow Sheath Fluid 20L	1	\$31.00	100.00	\$0.00
1.12	655050	BD FACSDiva CS&T Research Beads Kit 50T	2	\$113.29	100.00	\$0.00
1.13	336524	BD FACS Sheath Solution With Surfactant	1	\$51.00	100.00	\$0.00
1.14	334224	FACS Shutdown Solution	1	\$31.00	100.00	\$0.00
1.15	1147 SO DAQ Upgr1	SO Diva Electronics DAQ SCI Upgrade	1	"Included"	0	"Included"
1.16	1147 SO DAQ Upgr2	SO Diva Electronics DAQ SCI Preamp Upgr	1	"Included"	0	"Included"
1.17	660814	Svc Cont OBIS 488-60 Blue Lsr	1	\$3,257.40	100.00	\$0.00
1.18	657196	Svc Cont OBIS 640-100 LX Red Lsr	1	\$694.20	100.00	\$0.00
1.19	657190	Svc Cont OBIS 405-50 LX Violet Lsr	1	\$1,228.20	100.00	\$0.00
1.20	660828	Svc Cont OBIS 561-50 Y/G Lsr	1	\$1,762.20	100.00	\$0.00
1.21	657188	Svc Cont LSRFortessa X-20 SORP	1	\$13,563.60	100.00	\$0.00
1.22	337756	Svc Cont High Throughput Sampler	1	\$4,378.80	100.00	\$0.00
1.23	337755	Svc Cont FACS Flow Supply System	1	\$480.60	100.00	\$0.00
		Extended Warranty: One Year				



Becton, Dickinson and Company
BD Biosciences Business Unit
One Becton Drive
Franklin Lakes, NJ 07417
Tel: (855) 236-2772
Fax: (408) 954-2736
www.bdbiosciences.com

Total List Price:	\$295,576.03
Total Discount Amount:	\$29,557.60
Sub Total:	\$266,018.43
Shipping and Handling:	\$5,242.50
Grand Total:	\$271,260.93

Additional Notes:



Becton, Dickinson and Company
BD Biosciences Business Unit
One Becton Drive
Franklin Lakes, NJ 07417
Tel: (855) 236-2772
Fax: (408) 954-2736
www.bdbiosciences.com

Additional Comments:

*Offer subject to change

PROMOTION: Promotional pricing includes HTS Option and FACSFlow Supply System for LSRFortessa X20 SORP. One year extended warranty for instrument, HTS, and FACSFlow Supply System is included. All items must be purchased to receive this promotion. This quotation is non-transferrable.

This offer is not valid for distributor or third-party orders and cannot be combined with any other offers.

TRAINING: The purchase price for each system includes one training provision. A training provision is valid for an operator training course at the BD Biosciences (BD) Training Center in San Jose, CA and is NOT transferable to other courses or on-site training without an additional fee. Training must take place within one year from the date of system installation. BD provides lodging, breakfasts at the hotel, and lunches at the Training Center during the training. The cost of transportation is not included. To register for training, go to www.bdbiosciences.com/support/training/classroombased.jsp

If you opt to convert a training provision to on-site training, a conversion fee will be applied. The conversion includes two days of training at your facility for up to two people. If additional days of on-site training are needed, you can purchase additional days of training at a per day rate.

SHIPMENT: Unless otherwise noted. Within 60 days after receipt of an approved purchase order, not including the quotation time, contract verification, legal review, special delivery requirements, transit time to deliver to destination, etc. Accessories ordered, but not delivered with system will be invoiced separately.

WARRANTY: Twelve-month warranty will begin upon installation or thirty days after the date of shipment, whichever occurs first. This warranty runs only to the original purchaser of the instrument, option, accessory, software or upgrade and applies only to products purchased and installed in the United States by an authorized BD service representative or another party approved by BD. BD will install its instrument after shipment or reimburse the purchaser for actual costs incurred to have a third party install the instrument. The maximum reimbursement to purchaser for third party installation shall be \$1,500 for BD LSRFortessa instruments. The third party installer must be approved in writing by an authorized representative of BD prior to installation for warranty to become effective. BD will no longer provide on-site or mail-in printer repair support.

Computer hardware specifications are given for information purposes only. Due to computer market dynamics, all specifications are subject to change without notices.

Our standard terms and conditions apply.

For instrument orders, the criteria for acceptance/inspection/rejection is an instrument that meets the vendor's published specifications.



BD and FlowJo are one! Supporting you and your research from design to discovery.

FlowJo and BD are excited to offer a **FREE 90-day five-seat group license with the purchase of a new BD instrument!***

Choose from FlowJo or SeqGeq for your free trial.

FlowJo™ is the leading analysis platform for Flow Cytometry data analysis, containing models for advanced data analysis, novel combinatorial feature-sets available in one platform and the tools to visualize and communicate with ease.

SeqGeq™ (seek-geek) is a desktop bioinformatics platform for the analysis of single cell RNA sequencing data, complete with an intuitive drag-and-drop interface, and powerful tools to help you dive deep into single cell gene expression.

Visit flowjo.com for more information on the products, or to order your annual subscription.

Contact techsupport@flowjo.com for analysis support.

For Research Use Only. Not for use in diagnostic or therapeutic procedures.

BD, BD logo, FlowJo, SeqGeq and FlowJo Portal are trademarks of Becton, Dickinson and Company. © 2019 BD and its subsidiaries. All rights reserved.

BD Life Sciences, San Jose, CA 95131, USA

*Valid for new FlowJo Portal users with qualifying instrument purchase after 3/1/2019. License subject to BD's standard license terms.

Exhibit A. BD Biosciences Product Terms and Conditions

1. Order Acceptance: The following outlines the terms and conditions upon which BD Biosciences accepts orders for goods and services and constitutes the entire agreement between the parties. These terms and conditions will supersede any agreement or document, including terms and conditions that are part of a purchase order or other document sent to BD Biosciences by the BUYER. By issuing a purchase order, the BUYER is deemed to have accepted these terms.

2. Pricing: List prices for reagents can be obtained by visiting the BD Biosciences website www.bdbiosciences.com or contacting Customer Service toll-free at (855) 236-2772. BD provides quotes for instruments and service for BD Precise™ kits. BD Biosciences reserves the right to change pricing without notice.

3. Standard Reagent Orders: No minimum order quantity is required, unless specifically noted in the catalog. Orders cannot be revised or cancelled once a delivery note has been created. Additions to orders once a delivery note has been created must be entered on a separate order and may therefore be subject to additional shipping charges.

4. Shipping: All shipments are freight on board (FOB) shipping point and will be shipped upon availability. While BD will endeavor to ship as soon as practicable, BD makes no guarantee that any Products will be available at any particular date or that shipping will be completed within any particular time frame. BD Biosciences is not liable for any loss or damage during the course of shipment. This includes accidents, theft, vandalism, labor difficulties, or disputes, weather extremes, other acts of nature, or other circumstances causing a delay in delivery. Freight or shipping and handling charges will be prepaid and added to your invoice.

5. Packaging: Upon receipt, product should be stored under the conditions indicated by the technical data sheet. Some products require refrigeration after shipping.

6. Noncompliant or Damaged Goods: BD Biosciences must be notified of any claims for shortages, noncompliant or damaged products within 72 hours of receipt of the products or they shall be deemed accepted by BUYER. For damaged products, at BD Biosciences option, an authorization to return the goods may be issued or you may be asked to document the destruction of the goods at your site.

7. Reagent Returns: BD Biosciences Customer Service must be notified within 14 days after receipt of the product of any request to return a reagent product. A return authorization is required for all returns. Not all requests for return will be granted: for example, in the case of a Buyer's purchasing error or change in the order subsequent to shipping the product, authorization will not be granted. Special order and custom products, or products which cannot be resold will not be authorized for return in the absence of a defect. BD may choose to verify any performance problems prior to authorizing return or replacement. All return shipping costs are to be paid by the Buyer. Please contact the Customer Service department toll free within the U.S. at (855) 236-2772 to request authorization to return, information, or clarification of our policies.

8. Restocking Fee: All requests to return reagent products that do not have a verified performance problem will be subject to a restocking fee of 25% of the purchase price or a minimum of \$25, whichever is greater. If BD Biosciences makes a shipping error, the reagent product may be returned at BD Biosciences expense and no restocking fee will apply.

9. Payment Terms: Terms are net 30 days from date of invoice. BD Biosciences shall have the right to delay shipment or suspend performance under any agreement, if payment under any agreement or order between the Buyer and BD Biosciences is not received when due or is rescinded. Buyer warrants that it has funds or approved funding for all payments to be required under any purchase order placed or agreement executed with BD Biosciences. If the Buyer fails to pay any invoice when due, BD Biosciences may also charge the Buyer a late payment charge equal to the lesser of one and one-half percent (1½%), or the maximum permissible rate under California law, per month on the outstanding balance. If you are a tax exempt agency, please submit a copy of your tax exemption certificate with your purchase order or fax a copy to BD Biosciences, Attention: Credit Department at (201) 847-5334.

10. Product Use Limitations: BD Biosciences sells products for research and clinical use. Research products are labeled for Research Use Only (RUO) and are not for use in diagnostic or therapeutic procedures. Products for clinical use are labeled as Analyte Specific Reagents (ASR) or for In Vitro Diagnostic Use (IVD). Analytical and performance characteristics are not established for Analyte Specific Reagents. BD Biosciences is not liable for misuse of any product. All ASR and IVD products, and many RUO products, are manufactured in accordance with Good Manufacturing Practices (GMP) for devices under 21 CFR Part 820. The catalog includes a parenthetical notation indicating which RUO products are GMP manufactured. Note that all sales are to direct end users only and are not for resale.

11. Special Orders and Custom Configuration: Special orders and custom configuration products are warranted only to conform at the time of delivery to the carrier, the quantity and contents stated on the product label. There are no warranties, express or implied, that extend beyond the description of the label on the product. Buyer recognizes that BD Biosciences has manufactured the products at the instruction and to specifications provided by Buyer and has not independently tested the products for any characteristics other than those set forth on the label. Buyer takes all responsibility for confirming the appropriateness of the products for Buyer's intended use. BD assumes that Buyer has all rights necessary for the manufacture, use and sale of the products as they are pursuant to Buyer's specifications and makes no claims or inquiries as to such rights. Buyer agrees to indemnify and hold harmless BD Biosciences against any claims or damages relating to the failure to have sufficient rights. BD Biosciences sole liability in the event that a product does not conform to the quantity and contents stated on the product label is limited to either replacement of the products or refund of the purchase price. BD Biosciences is not liable for property damage, personal injury or economic loss caused by the product. Notwithstanding anything to the contrary in these terms and conditions, BD makes no representations or warranties with respect to any materials provided by Buyer for use with the products or as to the performance of the products when used with such materials. Research Use Only (RUO) custom products may be released without testing. Testing, where possible, may be available for an additional fee. Custom reagent orders are typically produced within six to eight weeks. Specifications for the Products are as set forth in the Quote except that for the BD™ Precise. BD specifications are set forth on the Custom Panel Approval Form referenced on the Quote.

12. INTELLECTUAL PROPERTY: All Intellectual Property in the Instrument Product and the Reagent Products and in respect of the Services is and shall remain the exclusive property of BD and/or its licensors. No rights in BD's Intellectual Property are granted to the Customer or to be implied from these Conditions.

No Services, including no design technical support or advisory services, will be performed as works made for hire and BD retains full rights to design or market the same or similar designs for other customers. "Intellectual Property" for the purpose of this condition shall mean all patents, copyright and related rights, trademarks, service marks, trade and business names, rights in designs, rights in computer software, database rights, know how, trade secrets and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights.

BD does not accept confidential information from its Customers or BUYER other than pursuant to a confidential disclosure agreement executed by the parties. With respect to orders of the BD Precise™ kits, BD may accept confidential information. The Customer to BD for use in connection with the provision of the Services including but not limited to data, specifications, drawings and equipment ("Customer Materials") these shall at all times be and remain the exclusive property of the Customer. The Customer Materials shall be maintained and kept in good condition by BD until returned to the Customer and shall not be disposed of other than in accordance with the Customer's written instructions. The Customer Materials shall not be used otherwise than as authorized by the Customer in writing.

Customer acknowledges that BD is in the business of creating BD™ Precise panels for customers, and BD does not transfer to customer any rights to any panel, and nothing herein shall prevent BD from creating or selling any product to another customer that is the same or similar to the Products made for or sold to the Customer.

Customer acknowledges that no work done in connection with the Products and none of the Services constitute a Work Made for Hire.

13. Information Provided to Third Party Suppliers: BD Biosciences may provide your information to suppliers of reagents, suppliers of hardware and software included in its instruments, or to integrators or other subcontractors whom BD Biosciences uses to manufacture or ship product to you. This information would be limited to product, purchase date, customer name and address and would be used for warranty claim or recall purposes.

14. Proprietary Software BD FACSLink™ Software License and Warranties: In consideration of the purchase price you pay for any instrument, BD's proprietary application and system software, and related documentation are licensed to you by BD Biosciences. You own the media on which the software is recorded, but BD Biosciences retains title to the software. This license allows you to use the software on a single computer and to make one copy of the software in machine readable form for backup purposes only. BD FACSLink software is licensed to you pursuant to a license agreement that is agreed at the time of installation and that BD has the right to enforce. BD proprietary and BD FACSLink software contain copyrighted material, trade secrets, and other proprietary information, and in order to protect them, you may not decompile, reverse engineer, disassemble, or reduce the software to human-perceivable form. All software and related documents are provided "AS IS" and without warranty of any kind. BD Biosciences does not warrant that the functions contained in the software will meet your requirements, or that the operation of the software will be uninterrupted or error-free, or that defects in the software will be corrected. Software, when purchased after the initial instrument purchase, will assume the warranty or Service Maintenance Agreement duration of the original instrument. If this purchase occurs during the last three months of the system warranty or Service Maintenance Agreement, or later, it will be considered a stand-alone purchase and will receive a three-month warranty from the date of installation or a four-month warranty from date of shipment, whichever occurs first. BD Biosciences will replace, free of charge, any defective media provided that it is returned during the warranty period to BD Biosciences. This limited warranty on the media runs only to the original Buyer and cannot be transferred or sold. This warranty does not apply if the product has been damaged by accident, abuse, misuse, misapplication or if the product has

been modified. Service for BD FACSLink software may be provided by Data Innovations, Inc. BD FACSLink uses Data Innovations' Instrument Manager™ software. ALL SOFTWARE IS PROVIDED "AS-IS" AND IS NOT WARRANTED TO BE FREE OF BUGS OR VIRUSES OTHER THAN THAT BD WARRANTS THAT IT WILL NOT KNOWINGLY TRANSFER ANY VIRUS TO CUSTOMER. CUSTOMER ACKNOWLEDGES THAT IT IS ITS RESPONSIBILITY TO MAINTAIN ANTI-VIRUS SOFTWARE AND PROCEDURES DESIGNED TO PROTECT THE INTEGRITY OF ITS NETWORK.

15. Third Party Software Warranty: Third party software, not developed by BD Biosciences, will carry the warranty, if any, of the third-party software vendor (e.g. Microsoft®, Verity Software House), not of BD Biosciences.

16. Instrument Warranties: BD Biosciences warrants that its instruments will perform in accordance with the specification described in the catalog or in the case of custom instruments, the specifications agreed to at the time the order is taken. The warranty period for instruments is 12 months and covers service Monday through Friday 8:00 AM – 5:00 PM local time. The twelve month warranty will begin: (1) for instruments that come with BD provided installation upon installation or thirty days after the date of shipment, whichever occurs first, or (2) for instruments that are sold to be installed by the customer seven weekdays after the date of shipment. This warranty applies only to products purchased and installed in the United States by an authorized BD Biosciences service representative or another party approved by BD Biosciences. For instruments that come with BD provided installation, BD Biosciences will install its instrument after shipment or reimburse the purchaser for actual costs incurred to have a third party install the instrument. The maximum reimbursement to BUYER for third-party installation varies with the type of instrument. Any third-party installer must be approved in writing by an authorized representative of BD prior to installation for warranty to become effective. Subject to the Service terms below, BD Biosciences will replace or repair, at its option free of charge, any instrument or part, excluding consumable items, as listed in the current BD Biosciences catalog or Consumable Price List (as the same may be modified from time to time), which fails within the warranty period, due to defects in materials or workmanship, provided that the instrument has been operated at all times in accordance with the instruction manual and user's guide by, or under the direct supervision of, a certified operator who has attended the BD Biosciences Training Course for the instrument or completed the self-training prior to operating the instrument. Only the unexpired original warranty period on the instrument shall be in effect on any replacement parts, which may be new or reconditioned at the discretion of BD Biosciences. Products not manufactured by BD Biosciences are not covered by this warranty, but instead will carry any warranty direct from the specified manufacturer or supplier.

Instrument Model	Warranty Period	Preventive Maintenance Visits during Warranty	Response Time Guarantee	Response Time Credit
BD FACSCalibur™	1 Year	1	24 Hours	\$500
BD FACSCanto™, BD FACSCanto™ II, and BD FACSCanto™ 10 Color	1 Year	1	24 Hours	\$500
BD FACSAria™, BD FACSAria™ III, and BD FACSAria™ Fusion	1 Year	1	48 Hours	\$500
BD FACSLyric™	1 Year	1	24 Hours	\$500
BD FACSCount™	1 Year	None	24 Hours	\$500
BD™ LSR II, and BD LSRFortessa™	1 Year	1	48 Hours	\$500
BD Influx™	1 Year	1	48 Hours	N/A
BD FACSJazz™	1 Year	1	N/a	N/A

BD FACS™ Lyse Wash Assistant	1 Year	None	None	N/A
BD FACS™ Sample Prep Assistant II and III	1 Year	1	24 Hours	\$500
BD™ High Throughput Sampler	1 Year	None	None	N/A
BD FACSVerse™	1 Year	1	48 Hours	\$500
BD FACS™ Universal Loader	1 Year	None	None	N/A
BD FACS™ Loader	1 Year	None	None	N/A
BD Accuri™	1 Year	None	None	N/A
BD FACSVia™	1 Year	1	24 Hours	\$500
BD FACSCelesta™	1 Year	1	48 Hours	\$500
BD FACSMelody™	1 Year	None	48 Hours	\$500
SORP BD™ LSR II, SORP BD LSRFortessa™, BD LSRFortessa™ X-20, BD LSRFortessa™ X-50, BD FACSymphony™ A3 and BD FACSymphony™ A5, SORP BD FACS Aria™, SORP BD FACS Aria™ Fusion	1 Year	1	None	N/A
BD GenCell Clic™	1 Year	1	48 Hours	N/A
Rhapsody	1 Year	1	24 Hours	N/A

17. Options, Accessories, or Upgrades Warranties: BD Biosciences offers warranties of varying periods on its options, accessories, software or upgrades. Those purchased at the same time as the instrument are included in the instrument warranty and will be covered by any subsequently purchased Service Maintenance Agreements, though upgrades are not automatically included. Options purchased after the initial instrument purchase will assume the remaining warranty or Service Maintenance Agreement of the original instrument, unless the purchase occurs during the last three months of the system warranty or Service Maintenance Agreement, or later, in which case it will be considered a standalone purchase and will receive a 90-day warranty from the date of installation or a 120-day warranty from the date of shipment, whichever occurs first.

18. Warranties:

A. Installation by an Authorized BD Biosciences Service Representative: Time and Material parts are warranted for 90 days after installation or 120 days after shipment, whichever is shorter. If a repairable part fails within the warranty period, it will be replaced at no charge. Labor and travel associated with the service visit is not covered and is considered billable.

B. Installation by Other Personnel: BD Biosciences does not provide a warranty on parts not installed by an authorized BD Service representative. No returns will be accepted or credits issued for material ordered via the Technical Support Center or Customer Service Department.

C. Disclaimer Applicable to All Products and Services

THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES THAT BD MAKES WITH RESPECT TO THE PRODUCTS AND SERVICES. BD MAKES NO FURTHER WARRANTY, EITHER EXPRESS OR IMPLIED WITH RESPECT TO ANY PRODUCT OR SERVICE, AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES FOR MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES WILL BD BIOSCIENCES OR ITS CONTRACTORS OR AGENTS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, LOST TIME, LOSS OF USE OF

INSTRUMENT OR REAGENTS, LOSS OF PROFIT OR ANY OTHER DAMAGES RESULTING FROM THE BREAKDOWN OR FAILURE OF ANY INSTRUMENT OR DELAYS IN SERVICES OR THE INABILITY TO SERVICE ANY INSTRUMENT. BD'S SOLE OBLIGATION AND LIABILITY FOR PRODUCT DEFECTS SHALL BE, AT BD'S OPTION, TO REPAIR OR REPLACE SUCH DEFECTIVE PRODUCT OR REFUND TO CUSTOMER THE AMOUNT PAID BY CUSTOMER THEREFOR. IN NO EVENT SHALL BD'S LIABILITY EXCEED THE CUSTOMER'S PURCHASE PRICE.

D. REAGENT PRODUCT LIMITED WARRANTY

Reagent Warranties: Reagent Products are warranted to conform to the description thereof on the label or, in the case of BD™ Precise reagents, the description on the Quotation, until the expiration date contained on the label. Reagent Products will be shipped with a shelf life of at least 90 days unless otherwise specified. In the event that Reagent Products do not so conform, they may be replaced as promptly as practicable, and Customer will destroy or return non-conforming products as requested by BD. With respect to BD™ Precise reagents or any custom reagents or customer instruments that were designed per a customer's request, BD warrants that the design or customization has been created professionally and in good faith to respond to the customer's request. BD does not warrant that the resulting reagents are suitable for the customer's use, or that they are the best arrangement possible for Customer's use. In the event that Customer notifies BD of a problem within thirty (30) days of receipt of BD™ Precise reagents, BD may examine the reagents and may determine that the problem is capable of being fixed easily or through a single redesign. BD may choose to provide customer with a replacement or a redesign, but makes no warranty as to the result. BD is not obligated to re-design any such reagents, and its decision to do so will be made in its own discretion.

19. WARRANTY LIMITATIONS:

- A. The warranties herein are valid provided that Products have been used and stored properly. In particular:
- B. The BD CLiC™ must be run using BD consumable products and only third party consumables that have been validated by BD (contact your customer representative if you have any question about whether a certain consumable may be appropriate).
- C. All Products contain technical data sheets or manuals that describe appropriate storage conditions and other advice for maintaining the storing the Products. The instruments must be serviced only by BD approved personnel or service providers and operated only by Customer staffs that are properly trained. Failure to follow these instructions may void BD's warranties.
- D. Customers are responsible for running third party- recommended QC procedures for given library preparation methods prior to sequencing. BD has not validated any other QC procedures for use with the BD CLiC platform.
- E. **THE FOREGOING REMEDY SHALL BE SUBJECT TO CUSTOMER'S WRITTEN NOTIFICATION OF DEFECT AND, FOR REAGENT PRODUCTS, RETURN OF THE DEFECTIVE PRODUCT WITHIN THIRTY (30) DAYS OF PURCHASE. THE FOREGOING REMEDY DOES NOT APPLY TO PRODUCTS THAT HAVE BEEN SUBJECTED TO MISUSE, NEGLIGENCE, ACCIDENT OR MODIFICATION, OR IF DAMAGE OCCURS AS A RESULT OF THE FAILURE OF CUSTOMER TO FOLLOW SPECIFIC INSTRUCTIONS, INCLUDING THOSE IN BD'S INSTRUCTIONS FOR USE OR USER MANUAL.**
- F. **THE ABOVE WARRANTIES RUN TO THE ORIGINAL PURCHASER ONLY DO NOT APPLY TO ANY PRODUCT THAT HAS BEEN SOLD OR TRANSFERRED TO ANY THIRD PARTY.**

20. Limitation of Liability: BD Biosciences liability is limited to repair, replacement of the product or refund of the purchase price. Additional disclaimers may apply to custom products and such disclaimers will appear in the quotation or other documentation provided with a custom order. No warranties apply to products that have been misused or improperly maintained.

- A. **THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL BD BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER SUCH DAMAGES ARE CHARACTERIZED IN TORT, NEGLIGENCE, CONTRACT, OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER BD HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF ESSENTIAL PURPOSE OF A LIMITED REMEDY, AND IN NO EVENT SHALL BD'S LIABILITY EXCEED CUSTOMER'S PURCHASE PRICE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND THAT BD WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ON THE TERMS SET FORTH HEREIN WITHOUT SUCH LIMITATIONS OF LIABILITY.**
- B. **CUSTOMERS USING PRODUCTS IN CONNECTION WITH SEQUENCING ACKNOWLEDGE THAT A FAILURE OF SOME OF THE PRODUCTS TO PERFORM MAY CAUSE SEQUENCING DATA TO BE INACCURATE AND BD IS NOT LIABLE THEREFOR.**
- C. **CUSTOMER AGREES TO PERFORM ANY QC PROCEDURES RECOMMENDED IN THE INSTRUCTIONS FOR USE.**
- D. **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER AGREES THAT BD WILL NOT BE LIABLE FOR ANY DAMAGES SUCH AS INACCURATE SEQUENCING, FLOW CYTOMETRY OR OTHER DATA OR ANY ASSOCIATED COSTS, DAMAGES, EXPENSES OR OTHER LIABILITIES, WHETHER OR NOT CUSTOMER PERFORMED QC PROCEDURE RECOMMENDED IN THE INSTRUCTIONS FOR USE.**
- E. BD shall have no liability to the Customer for a failure or delay to provide Services in the event of: (i) the use by the Customer of any product other than Products in conjunction with the Instrument Product; (ii) the defect arising because the Customer failed to

follow BD's oral or written instructions as to the storage, use and servicing of the Instrument Product and Products or (if there are none) good trade practice regarding the same; (iii) the defect arising as a result of BD following any drawing, design or specification supplied by the Customer; (iv) the Customer altering or repairing such Instrument Product or Products without the written consent of BD; or (v) the defect arising as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions on the part of the Customer.

21. Indemnification: BUYER acknowledges that it is fully responsible for its use of any BD Biosciences product and agrees to indemnify, defend, and hold harmless BD Biosciences and its affiliates, officers, directors, employees, and agents against any and all third party liabilities arising from such use except to the extent such liabilities arise from the infringement of any BD Biosciences products (other than custom reagents or instruments) that infringe any valid U.S. patent of a third party when used in accordance with instructions.

22. Governing Law: Any order placed or contract made with BD Biosciences shall be governed by the laws of the State of California and both parties hereby submit and waive all objections to the exclusive jurisdiction of the courts of California and the federal courts located in California.

23. Acceptance of Terms: If the above terms are not acceptable to you, promptly return any products in the package in which they were received. Failure to promptly return the products or any use of the products constitutes acceptance of the above terms.

Exhibit B. Terms of Service for BD Biosciences Instruments

When BD Biosciences performs service pursuant to an instrument or parts warranty or a Service Maintenance Agreement, it will do so subject to the following terms and conditions.

I. General

- A.** These terms control all of the dealings between the parties relating to service provided pursuant to it. Any other document or arrangement, including any terms and conditions included as part of a purchase order sent to BD BIOSCIENCES by BUYER, which is inconsistent with the terms of this document, is not a part of the contract for service set forth in this document.
- B.** Service Maintenance Agreements are not assignable by BUYER and shall not pass to the benefit of any eventual transferee of the INSTRUMENT(s) from BUYER.
- C.** Acceptance of BUYER's request for Service Maintenance Agreement is conditioned on agreement with all the terms and conditions set out herein. By issuing a purchase order, BUYER will be deemed to have accepted these terms.
- D.** Service Maintenance Agreements may not be terminated by BUYER prior to the end of the term.
- E.** BD Biosciences products include BD Assurity Linc™, our secure remote support solution. Service and maintenance will be conducted remotely to diagnose or resolve issues before Field Service Representatives are dispatch to site for repairs.

II. BD Biosciences Responsibilities

- A. Service To Be Performed:** With respect to the INSTRUMENT(s) set forth in the quotation or Service Maintenance Agreement to which these terms and conditions relate (the "Term"), and subject to these terms and conditions, BD Biosciences agrees to perform remote service or send a Field Service Representative (a "Representative") to perform (a) the number of preventive maintenance inspections indicated above and (b) unlimited remote support and onsite visits as reasonably requested by BUYER to perform repairs. The Representative must be permitted access through BD Assurity Linc, BD Biosciences' secure portal, and given full and free access to the INSTRUMENT(s). In addition, BD Biosciences may through an authorized service provider, provide service on components and software manufactured by third parties in accordance with the warranty of such third party manufacturer. It is the responsibility of BUYER to register all third-party products and software with the third party for purposes of warranty and end user license. BD BIOSCIENCES does not provide service on computer workstation printers. BD Biosciences may repair or replace any INSTRUMENT(s) at its discretion in satisfaction of its obligations hereunder.
- B.**
- C. Preventive Maintenance Inspections:** During each preventive maintenance visit, the Representative will evaluate the INSTRUMENT(s) performance and provide a preventative maintenance kit (if applicable) for use by BD Biosciences' Representative. Calibrations, alignments, lubrication and part replacement will be performed as deemed necessary by BD Biosciences to maintain the INSTRUMENT(s) operation substantially in accordance with the published technical specifications for the INSTRUMENT.
- D. Technical Support:** BUYER may obtain support by calling BD Biosciences' toll-free number which may be found through www.bdbiosciences.com. BUYER may use the toll-free number to speak with a BD Biosciences Representative during

working days between the hours of 8 AM and 12 AM Eastern Time, and may leave a message at other times. BD shall provide the Services Monday through Friday, 9:00 a.m. to 5:00 p.m. (local time for the Customer), excluding holidays ("Working Hours"), and the Parties shall work together to schedule the Services at a time that is mutually convenient. BD Biosciences guarantees its response time for certain INSTRUMENT(s), pursuant to the description of the INSTRUMENT contained in the quotation or Service Maintenance Agreement. Failure to meet the BD Biosciences guaranteed response time shall result in a credit as BUYER's sole remedy. The amount of this credit is set forth in the description of the INSTRUMENT contained on the quotation or Service Maintenance Agreement and such credits must be utilized no later than 90 days following the end of the term and may be used to purchase spare parts, consumable parts (excluding reagents and sheath fluid), applied toward the renewal cost of a Service Maintenance Agreement or applied towards the tuition fee for training courses offered by BD Biosciences. Technical Support information for the CLIC and Genomics instruments will be provided at time of delivery

- E. Parts:** BD Biosciences will provide all parts required to affect a repair covered under its service obligation, except for consumables and subject to the exclusions contained in Section III below. All defective parts must be returned to BD Biosciences. The use of new or like-new parts will be at the discretion of BD Biosciences and is not obligated hereby to provide parts for spares or inventory or service on any such parts.
- F. Software Revisions:** BD Biosciences may, at its discretion from time to time hereafter, issue revisions to its proprietary software at no charge. A charge may apply for upgrades to BD Biosciences proprietary software. Updates and revisions to third-party software are not provided by BD Biosciences.
- G. Software and Firmware:** BD warrants for the Agreement term that the software and firmware sold to Buyer will conform to BD's operation manuals current at the time of shipment to BUYER when properly installed. BD does not warrant that the software and firmware will operate uninterrupted or error-free. BUYER's sole remedy for breach of this warranty is replacement by BD of the non-conforming software or firmware with conforming or updated software or firmware.
- H. Shipping & Handling:** Shipping & Handling charges for replacement parts that are covered under Warranty or Service Maintenance Agreements will be at no charge to BUYER. Shipping & handling charges for reagents, consumables and priority parts shipments are specifically excluded and will be billed to BUYER at the current rate.

III. Buyer Responsibilities

- A.** The Service Fees for the period of one year from the Commencement Date shall be the fees set out in the Quote. The Service Fees for any year after the anniversary of the Commencement Date shall be determined in accordance with Condition 3.3.
- B.** BUYER shall be responsible for providing and maintaining a proper environment, including utilities and site requirements, for the INSTRUMENT(s). A Site Installation Guide, detailing this information, is provided to the BUYER when the INSTRUMENT(s) is purchased.
- C.** The BUYER shall (i) co-operate with BD in all matters relating to the Services; (ii) be responsible (at its own cost) for preparing and maintaining the relevant premises for the installation of the Instrument Product and any supply of the Services, including preparing the site in accordance with BD's facility guide and identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises; (iii) obtain and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the installation of the Instrument Product and the Services, in all cases before the date on which the installation or the Services are to start; (iv) keep the Instrument Product in good condition and shall not dispose of or use the Instrument Product other than in accordance with BD's written instructions or authorization; (v) inform BD of the Customer's health and safety policy and any other Customer policies that apply to BD's Representatives in the provision of the Services; (vi) report faults in the Instrument Product to BD as soon as possible after becoming aware of same; and (vii) use only BD-approved reagents with any Instrument Product.
- D.** BUYER agrees not to alter the INSTRUMENT(s) without prior consultation with and written approval from BD Biosciences, or use any repair parts other than those supplied or specified by BD Biosciences.
- E.** BUYER agrees to have the INSTRUMENT(s) operated at all times in accordance with the Instruction Manual by or under the direct supervision of a qualified operator who has completed the BD Biosciences Training Course.
- F.** BUYER agrees to maintain a safe work environment and to comply with all applicable laws, rules and regulations relating to safety in order to ensure the safety of all Representatives and other BD employees and agents who enter BUYER's premises. BD Biosciences may, from time to time in response to a concern over the safety of Representatives, visit BUYER's facilities in which the Representative and other BD employees and agents perform Services hereunder in order to audit safety compliance. Such audit would only occur during working hours and at a time reasonably agreed. BD Biosciences, its affiliates, personnel, agents and subcontractors shall not be required to enter potentially hazardous areas and BD Biosciences reserves the right to determine whether and under what circumstances its personnel, agents or subcontractors shall enter any premises. In no event will BD Biosciences be obligated to perform Services if it is not, in its sole discretion, satisfied with respect to safety.
- G.** In the event that the INSTRUMENT(s) being serviced has at any time been operated in a location that falls into the category of a Biosafety Level 4 laboratory (a "BSL 4" laboratory) according to the then-current edition of "Biosafety in Microbiological and Biomedical Laboratories" published by the U.S. Department of Health and Human Services, or that would in BD Biosciences' opinion fall into such category were it located in the United States, it shall be the responsibility of BUYER to

remove from such laboratory or other facility the INSTRUMENT(s) and decontaminate to the satisfaction of BD Biosciences, in its sole discretion, before any work is performed on the INSTRUMENT(s). All costs associated with such removal, decontamination, and re-installation shall be borne by BUYER. With respect to laboratories operated under the designation Biosafety Level 3 (A "BSL 3" laboratory), BD Biosciences reserves the right to evaluate the conditions existing therein. BUYER agrees and shall render full cooperation, including but not limited to affirmative disclosures related to any hazards in such facilities. BD Biosciences may conduct a risk assessment and require remediation to its satisfaction before any work is performed on an INSTRUMENT(s) located in a BSL 3 laboratory. In any event, if BD Biosciences determines that laboratory procedures and policies are inadequate to provide a safe environment for service personnel, BD Biosciences reserves the right to refuse service support until the situation is rectified to its satisfaction including with respect to, any injuries to the personnel, agents and subcontractors of BD Biosciences and its affiliates. BUYER agrees to notify BD Biosciences of its status as a BSL 3 or BSL 4 laboratory and to provide notice of all relevant protocols and any changes thereto. BUYER agrees and shall render full cooperation, including but not limited to affirmative disclosures related to any hazards in such facilities. All required safety training, personal protective equipment, instrument test equipment and necessary tools required for instrument service located in a BSL 3 laboratory, must be supplied by the BUYER. BD Biosciences reserves the right to discontinue any and all BSL3 laboratory instrument service until appropriate personal protective equipment and tools are furnished by the BUYER. Calibration of the tools and test equipment are the sole responsibility of the BUYER. No parts may be returned to BD Biosciences and must be disposed of by the BUYER. BD Biosciences field service personnel are not required to take BD tools and calibration equipment into the BSL 3 laboratory space. If tools are not available, BD Biosciences is not obligated to provide on-site repair service. In the event the BUYER is unable to make the instrument available for scheduled preventative maintenance in a 60-day period from the initial planned service date, BUYER waives the right to have that scheduled service visit performed during the contract year or thereafter. No compensation will be provided by BD Biosciences for any missed preventative maintenance services.

- H.** BUYER agrees to indemnify and hold harmless BD BIOSCIENCES, its affiliates and their employees, agents, officers and directors (the "BD Indemnified Parties") from and against (a) any and all actions or claims brought by a third party relating to the services and parts supplied hereunder unless BUYER can show that such third-party action involves death or personal injury and results solely from BD Biosciences' gross negligence or willful misconduct, in which case BUYER agrees to indemnify and hold the BD Indemnified Parties harmless from and against any amounts required to be paid in excess of the amounts actually paid by BUYER to BD BIOSCIENCES hereunder; and (b) any and all liability relating to BUYER's failure to comply with Section III. With respect to laboratories operated under the designation Biosafety Level 3, (a "BSL 3" laboratory) BD BIOSCIENCES reserves the right to evaluate the conditions existing therein. BUYER agrees and shall render full cooperation, including but not limited to affirmative disclosures related to any hazards in such facilities. BD BIOSCIENCES will conduct a risk assessment and require remediation to its satisfaction before any work is performed on an INSTRUMENT(s) BSL 3 laboratory. BUYER's indemnification obligations hereunder shall include the payment of reasonable attorney's fees.
- I.** Upon purchase of a Service Maintenance Agreement, BUYER is obligated for the duration of the agreement specified and is responsible for payment in full. Service Maintenance Agreements are not cancelable.
- J.** The Customer shall provide such information as BD may reasonably request in order to carry out Services in a timely manner, and ensure that such information is accurate in all material respects.
- K.** If BD's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, or the Customer's Representatives, BD shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

IV. Exclusions

- A.** Service does not include consumable items (except preventive maintenance kits as applicable).
- B.** Consumable items are listed in BD Biosciences product catalog under spare parts and consumables section. Any consumable items replaced by BD Biosciences during the course of a service call or inspection will be billed to the BUYER at BD Biosciences' then current list price.
- C.** Neither the warranty nor the Service Maintenance Agreement provide for Service relating to damage caused to the INSTRUMENT(s) or any part thereof, by accident, the elements, failure of electrical power, Acts of God, the use of unauthorized parts or reagents or negligence are not covered under this Agreement. Work performed by BD Biosciences on the INSTRUMENT(s) made necessary as a result of such causes shall be billed to the BUYER at BD Biosciences' then prevailing rate for parts, labor and travel expenses.
- D.** Any damage caused during transportation for the service of a depot repaired product is not covered under this Agreement.
- E.** Defacement of the Product's serial number will void this Agreement.
- F.** Any incorporation of the Product under this Agreement into a system without BD's approval will void this Agreement.
- G.** Any work to be performed by BD Biosciences on a weekend or BD Biosciences designated holiday is subject to availability and will be billed at weekend/holiday rates in effect at the time of the service, unless otherwise indicated by Service Maintenance Agreement.
- H.** The warranty and the Service Maintenance Agreement do not provide for Service on the computer workstation printer.
- I.** Service may be discontinued on any Third Party software or hardware that is not currently marketed by BD.

- J. The warranty and the Service Maintenance Agreement do not provide for Service relating to a failure to comply with Section III or any other damage to the INSTRUMENT(s) resulting from BUYER's negligence.

V. Service Parts Warranty

- A. All parts supplied by BD Biosciences during the warranty period or Service Maintenance Agreement period are warranted against defects in material and workmanship until the expiration date of the term and all service shall be performed in a professional manner. BD Biosciences' sole responsibility under this warranty shall be to repair or replace parts found to be defective. The Customer must make any claim for breach of this warranty within ninety (90) days of the date the Services were performed or the Products were installed or delivered, as appropriate, and prior to any unauthorized repair, change, or modification has been made to any part of the Instrument Product. BD makes no other warranties of any kind whatsoever, express or implied. BUYER'S SOLE REMEDY FOR ANY CLAIM HEREUNDER, WHETHER SUCH CLAIM IS MADE UNDER CONTRACT, TORT, OR ANY THEORY OF LAW, SHALL BE THE REPAIR OR REPLACEMENT OF ANY PART IN QUESTION.
- B. BD warrants that the Services that it provides to the Customer will be in accordance with the generally accepted standards prevailing in the industry.

C. Disclaimer Applicable to All Products and Services

THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES THAT BD MAKES WITH RESPECT TO THE PRODUCTS AND SERVICES. BD MAKES NO FURTHER WARRANTY, EITHER EXPRESS OR IMPLIED WITH RESPECT TO ANY PRODUCT OR SERVICE, AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES FOR MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES WILL BD BIOSCIENCES OR ITS CONTRACTORS OR AGENTS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, LOST TIME, LOSS OF USE OF INSTRUMENT OR REAGENTS, LOSS OF PROFIT OR ANY OTHER DAMAGES RESULTING FROM THE BREAKDOWN OR FAILURE OF ANY INSTRUMENT OR DELAYS IN SERVICES OR THE INABILITY TO SERVICE ANY INSTRUMENT. BD'S SOLE OBLIGATION AND LIABILITY FOR PRODUCT DEFECTS SHALL BE, AT BD'S OPTION, TO REPAIR OR REPLACE SUCH DEFECTIVE PRODUCT OR REFUND TO CUSTOMER THE AMOUNT PAID BY CUSTOMER THEREFOR. IN NO EVENT SHALL BD'S LIABILITY EXCEED THE CUSTOMER'S PURCHASE PRICE.

VI. Miscellaneous

- A. **Limitation of Liability:** BD Biosciences' liability is limited to repair, replacement of the product or refund of the purchase price. Additional disclaimers may apply to custom products and such disclaimers will appear in the quotation or other documentation provided with a custom order. No warranties apply to products that have been misused or improperly maintained.
- B. **Governing Law:** Any order placed or contract made with BD Biosciences shall be governed by the laws of the State of California and both parties hereby submit and waive all objections to the exclusive jurisdiction of the courts of California and the federal courts located in California.
- C. **Variations and Waiver.** Any variation of these Conditions shall be in writing and signed by or on behalf of the Parties. Any waiver of any right under these Conditions is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given. Any waiver by either Party of any breach of, or any default under, any provision of these Conditions by the other Party will not be deemed as a waiver of any subsequent breach or default and will in no way affect the other terms of these Conditions. Failure to exercise or delay by either Party in exercising any right or remedy provided under these Conditions or by law shall not constitute a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy. No single or partial exercise of any right or remedy under these Conditions shall prevent or restrict the further exercise of any other right or remedy.
- D. **Severance.** If any provision of these Conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



Maintenance Service Agreement Options (Cont.)

Point of Sale Pricing

Svc Cont OBIS 488-60 Blue Lsr

Plan	Purchased with Instrument	Comparison Based on Annual Purchases	Estimated Savings	Purchased with Instrument Payment Annually in Advance
1 Year Plan	\$3,257.40	\$3,660.00	\$402.60	\$3,306.26
2 Year Plan	\$6,368.40	\$7,503.00	\$1,134.60	\$6,463.93
3 Year Plan	\$9,333.00	\$11,538.15	\$2,205.15	\$9,473.00
4 Year Plan	\$12,151.20	\$15,775.06	\$3,623.86	\$12,333.47
5 Year Plan	\$14,823.00	\$20,223.81	\$5,400.81	\$15,045.35



Maintenance Service Agreement Options (Cont.)

Point of Sale Pricing

Svc Cont OBIS 640-100 LX Red Lsr

Plan	Purchased with Instrument	Comparison Based on Annual Purchases	Estimated Savings	Purchased with Instrument Payment Annually in Advance
1 Year Plan	\$694.20	\$780.00	\$85.80	\$704.61
2 Year Plan	\$1,357.20	\$1,599.00	\$241.80	\$1,377.56
3 Year Plan	\$1,989.00	\$2,458.95	\$469.95	\$2,018.84
4 Year Plan	\$2,589.60	\$3,361.90	\$772.30	\$2,628.44
5 Year Plan	\$3,159.00	\$4,309.99	\$1,150.99	\$3,206.39



Maintenance Service Agreement Options (Cont.)

Point of Sale Pricing

Svc Cont OBIS 405-50 LX Violet Lsr

Plan	Purchased with Instrument	Comparison Based on Annual Purchases	Estimated Savings	Purchased with Instrument Payment Annually in Advance
1 Year Plan	\$1,228.20	\$1,380.00	\$151.80	\$1,246.62
2 Year Plan	\$2,401.20	\$2,829.00	\$427.80	\$2,437.22
3 Year Plan	\$3,519.00	\$4,350.45	\$831.45	\$3,571.79
4 Year Plan	\$4,581.60	\$5,947.97	\$1,366.37	\$4,650.32
5 Year Plan	\$5,589.00	\$7,625.37	\$2,036.37	\$5,672.84



Maintenance Service Agreement Options (Cont.)

Point of Sale Pricing

Svc Cont OBIS 561-50 Y/G Lsr

Plan	Purchased with Instrument	Comparison Based on Annual Purchases	Estimated Savings	Purchased with Instrument Payment Annually in Advance
1 Year Plan	\$1,762.20	\$1,980.00	\$217.80	\$1,788.63
2 Year Plan	\$3,445.20	\$4,059.00	\$613.80	\$3,496.88
3 Year Plan	\$5,049.00	\$6,241.95	\$1,192.95	\$5,124.73
4 Year Plan	\$6,573.60	\$8,534.05	\$1,960.45	\$6,672.20
5 Year Plan	\$8,019.00	\$10,940.75	\$2,921.75	\$8,139.29



Maintenance Service Agreement Options (Cont.)

Point of Sale Pricing

Svc Cont LSRFortessa X-20 SORP

Plan	Purchased with Instrument	Comparison Based on Annual Purchases	Estimated Savings	Purchased with Instrument Payment Annually in Advance
1 Year Plan	\$13,563.60	\$15,240.00	\$1,676.40	\$13,767.05
2 Year Plan	\$26,517.60	\$31,242.00	\$4,724.40	\$26,915.36
3 Year Plan	\$38,862.00	\$48,044.10	\$9,182.10	\$39,444.93
4 Year Plan	\$50,596.80	\$65,686.31	\$15,089.51	\$51,355.75
5 Year Plan	\$61,722.00	\$84,210.62	\$22,488.62	\$62,647.83



Maintenance Service Agreement Options (Cont.)

Point of Sale Pricing

Svc Cont High Throughput Sampler

Plan	Purchased with Instrument	Comparison Based on Annual Purchases	Estimated Savings	Purchased with Instrument Payment Annually in Advance
1 Year Plan	\$4,378.80	\$4,920.00	\$541.20	\$4,444.48
2 Year Plan	\$8,560.80	\$10,086.00	\$1,525.20	\$8,689.21
3 Year Plan	\$12,546.00	\$15,510.30	\$2,964.30	\$12,734.19
4 Year Plan	\$16,334.40	\$21,205.81	\$4,871.41	\$16,579.42
5 Year Plan	\$19,926.00	\$27,186.11	\$7,260.11	\$20,224.89



Maintenance Service Agreement Options (Cont.)

Point of Sale Pricing

Svc Cont FACS Flow Supply System

Plan	Purchased with Instrument	Comparison Based on Annual Purchases	Estimated Savings	Purchased with Instrument Payment Annually in Advance
1 Year Plan	\$480.60	\$540.00	\$59.40	\$487.81
2 Year Plan	\$939.60	\$1,107.00	\$167.40	\$953.69
3 Year Plan	\$1,377.00	\$1,702.35	\$325.35	\$1,397.65
4 Year Plan	\$1,792.80	\$2,327.47	\$534.67	\$1,819.69
5 Year Plan	\$2,187.00	\$2,983.84	\$796.84	\$2,219.81

BD FACS Flow Supply System™

Maintenance Service Agreement Options

5-Day Coverage (Monday - Friday)

This option covers the BD FACS Flow Supply System™ for labor, travel expenses and parts (excluding consumable items) for the following:

- **Unlimited service visits during the term of this Agreement, Monday through Friday, excluding BD Biosciences holidays.**
- **Unlimited telephone support for instruments, reagents and applications will be provided at no additional charge.**

BD™ High Throughput Sampler Maintenance Service Agreement Options

5-Day Coverage (Monday - Friday)

This agreement covers the BD™ High Throughput Sampler for all parts (excluding consumable items) for the following:

- **One (1) Preventive Maintenance Inspections to be performed during a twelve-month period.**
- **One (1) Preventive Maintenance Kits will be provided.**
- **Replacement with a certified refurbished unit, if required, at the discretion of BDB. Replacement, if required, will be provided within two (2) working days.**
- **The user agrees to return the malfunctioning HTS within 5 business days upon receipt of replacement to the BD Biosciences Repair Center, in San Jose, CA. If HTS is not received, the customer will be invoiced for the full value.**
- **Unlimited telephone support for instruments, reagents and applications will be provided at no additional charge.**
- **BD Biosciences will assume all costs associated with labor, shipping and parts, excluding consumable items.**