

625



**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FROM:** Riverside County Regional Medical Center


**SUBMITTAL DATE:**  
June 22, 2012

**SUBJECT:** Approval of Hologic as the Sole Source vendor for Stereotactic Breast Biopsy System

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and authorize the Sole Source purchase request with Hologic to purchase Stereotactic Breast Biopsy System in accordance with Ordinance 459.4.
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to execute renewal of annual maintenance agreement for four (4) additional years, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement up to ten percent (10%) the maximum contract amount.


(cont. on Page 2)

**REVIEWED BY CIP**  
  
**Christopher Hans**

  
 \_\_\_\_\_  
 Douglas D. Bagley, Hospital Director

<b>FINANCIAL DATA</b>	<b>Current F.Y. Total Cost:</b>	\$ 160,547	<b>In Current Year Budget:</b>	Yes
	<b>Current F.Y. Net County Cost:</b>	\$ 0	<b>Budget Adjustment:</b>	No
	<b>Annual Net County Cost FY:</b>	\$ 0	<b>For Fiscal Year:</b>	12/13
<b>SOURCE OF FUNDS: Enterprise Funds</b>			<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
			<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

**APPROVE**  
 BY:   
 Debra Cournoyer

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
 BY:  NEAL R. KIPNIS  
 DATE: 6/27/12  
 Purchasing Agent:  Mark Seiler, Assistant Director  
 Dept't Recomm.:  Consent  Policy  
 Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.:** | **District:** 5/5 | **Agenda Number:**

3.47

**SUBJECT:** Approval of Hologic as the Sole Source vendor for Stereotactic Breast Biopsy System

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**BACKGROUND:**

The stereotactic biopsy unit at Riverside County Regional Medical Center has reached its end of life and is no longer repairable. This equipment is used to perform the stereotactic biopsy procedures on patients considered with a high probability of being diagnosed with breast cancer. This service provides for completion of timely procedures with results provided back to the physician to establish a diagnosis and treatment plan.

**PRICE REASONABLENESS**

The Hologic table is part of the Med Assets GPO pricing. Hologic is providing a 25% discount, an additional three (3) months to the normal twelve (12) month warranty and \$10,000.00 trade-in credit. List price is \$259,000.00; sale price \$155,000.00, Software \$4,000.00, Trade-in \$10,000.00. Final Price is \$149,000.00 plus 7.75% sales tax. Total price is \$160,547.00.

Hologic is providing a 25% discount on a four (4) year Multicare Platinum Maintenance Agreement start at end of the 15 month warranty at \$11,744.00 paid annually.

DB:rs

Date: June 22, 2012  
From: Douglas Bagley, Hospital Director, Riverside County Regional Medical Center  
To: Board of Supervisors  
Via: Purchasing Agent  
Subject: Sole Source Procurement; Request for: Hologic Stereotactic Breast Biopsy System

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** The stereotactic biopsy unit at RCRMC is no longer repairable. This equipment is needed to perform the stereotactic biopsy procedure on those patients considered as a high probability of being diagnosed with breast cancer. This service provides for completion of timely procedures with results provided back to the physician to establish a diagnosis and treatment plan.
2. **Supplier being requested:** Hologic, Inc.
3. **Alternative suppliers:** Yes, however, the Siemens Mammotest Plus product lateral arm does not allow for imaging of inferior breast lesions because the arm only has 180 degree access. The Siemens Mammotest Plus table uses polar coordinates which does not allow for adjustments on targeting of breast lesions. When unable to view the breast lesions, patients must be referred to a facility that has a Hologic table or referred for surgery for an excisional biopsy. The Hologic table supports patients up to 350 lbs. while the Siemens product supports only 300 lbs.
4. **Extent of market search conducted:** A survey of local hospitals/clinics was conducted. Kaiser hospitals/clinics no longer use the Siemens Mammotest units. Kaiser's decision was made regionally. The hospital contracted physicist provides consulting services to 15 hospitals in Southern California and all have the Hologic breast biopsy table.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** The full rotation to access the lesion without the need for additional set-up time or quality control (QC) checks for lateral arm. This improves patient throughput times. Cartesian coordinates for targeting breast lesions are available on the Hologic Unit. These coordinates allow fine tuning of the needle without having to retarget the lesion for the procedure.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** If radiologists cannot target the breast biopsy lesions during the procedure, the alternative is to have surgery. This increases the cost and the likelihood of complications as a result of the surgical procedure. It is not standard of care for physicians to use the operating room for this procedure as it negatively impacts the availability of the operating rooms and physician use of time.

During the past two months we have referred patients from RCRMC to outside facilities for the procedure. Two patients were referred back to RCRMC. This referral facility's equipment (Fischer unit) did not have the capability of targeting the location of the inferior lesion to complete the procedure. This delay in the physician's ability to diagnose and establish a treatment plan results in a negative patient experience.

7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The Hologic table is part of the Med Assets GPO pricing. Hologic is providing a 25% discount, an additional 3 months to the normal 12 month warranty and \$10,000.00 trade-in credit. List price \$259,000.00 sale price \$155,000.00, Software \$4000.00, Trade-in \$10,000.00. Final Price \$149,000.00 plus sales tax at 7.75%. Total price \$160,547.

25% discount on Four year Multicare Platinum Maintenance Agreement start at end of 15 month warranty at \$11,744.00 paid annually.

8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** Four year Multicare Platinum Maintenance Agreement start at end of 15 month warranty at \$11,744.00 paid annually.




9. **Period of Performance: July 1, 2012.**

*(Provide a defined period of performance. Please note multi-year terms require Board approval, unless renewable in one year increments and the Purchasing Agent approves the terms.)*

   
\_\_\_\_\_  
Department Head Signature Date

Purchasing Department Comments:

<u>Approve</u>	Approve with Condition/s	Disapprove
Not to exceed: <u>\$160,547.00</u>	X One time	X <u>\$11,744. Annual through September 2017</u>

    
\_\_\_\_\_  
Purchasing Agent Date Approval Number  
(Reference on Purchasing Documents)

**Quotation**



The Women's Health Company

PLEASE REFER TO THIS NUMBER ON ALL CORRESPONDENCES AND ORDERS

Quote #: 176186

Buying Group: MEDASSETS - Mammo Group Buy

Status : Done

TO: Riverside County Regional Medical Center  
26520 Cactus Ave  
Moreno Valley, CA 92555-3927

We are pleased to offer you the products listed on the condition that this Quotation and the attached terms comprise the complete and exclusive statement of the contract between us. This Quotation is based on the information known by Hologic regarding your needs as of the date the Quotation is generated. This Quotation and the attached terms supersede all other quotations, agreements, understandings, warranties and representations, whether written or oral, between us, and may be accepted only in accord with their terms. This offer will remain open for 45 days after the quotation date unless otherwise specified, and is subject to change or withdrawal by Hologic prior to acceptance. To accept, please sign below within the time period for acceptance.

**TAX INFO:**

Hologic is required by law to collect all state and local taxes on all sales. If an exemption certificate is not provided by customer at time of order, final invoices will include these amounts. Many states require both specific operator qualifications and/or licensing and registration of x-ray devices. Hologic is not responsible for fulfilling customer's regulatory obligations.

Signed quote and/or purchase order should be forwarded by mail, via e-mail or by fax to:  
Skeletal Health (DXA & Mini-C) HOLOGIC, INC. 36 Apple Ridge Road Danbury, CT 06810  
Breast Health: HOLOGIC, INC. 6100 Technology Center Drive Indianapolis, IN 46278  
Interventional Breast Solutions (Suros) HOLOGIC, INC. 6100 Technology Center Drive Indianapolis, IN 46278  
ATTN: Sales Administration  
ATTN: Sales Administration  
ATTN: Sales Administration  
Fax: (781) 280-0668  
Danburyorders@hologic.com  
Bed-SalesAdmin@hologic.com  
allfieldservicecoordinators@hologic.com

ATTN: Onalee Shinn

Phone:

Fax:

Email:

Quote Date	Hologic Representative	Payment Terms	FOB	Est. Del. Date
Apr 05, 2012	Ana Marisa Velasco avelasco@hologic.com	0-80-20	FACTORY, NO CHARGE	60-90 Days ARO

Qty	Product Model Number and Description	List Price (US \$/Unit)	Unit Price (US \$/Unit)	Extended Price (US \$)
1	<p><b>MULTICARE PLATINUM WITH MAX. COMFORT PKG - Stereotactic Breast Biopsy System w/Maximum Comfort Package</b> The MultiCare Platinum Breast Biopsy Systems consist of:</p> <p>Table Specifications: Bi-directional elevating table assembly Motorized Height Range – 34 to 57 inches Table Surface Dimensions – 72 x 28 inches - closed Max Length – 106 inches Max Patient Weight – 300lbs - Stationary Weight - 350 lbs.</p> <p>Tabletop - A full table top, steel constructed with adjustable foam-padded curved foot-rests, built-in underside LED rope lighting for operator visualization, and three (3) interchangeable apertures: (1) standard opening aperture 9.0 inches (1) larger 10.5 inch opening aperture (1) rounded square aperture for arm thru procedures</p> <p>Four (4) different cushions for the center of the table and one (1) for the rear pillar to facilitate positioning and address patient comfort: a) Standard Pad – provides support to targeted pressure points, while giving additional access. b) Maximum Access Pad – thinner design to provide comfort while enhancing access for small breasts and high chest wall lesions. c) Maximum Comfort Pad - provides superior support and cushioning for majority of patients that do not have high chest wall lesions d) Arm Through Pad - provides support and comfort when positioning patients with their arm through the opening for axillary lesions; and for positioning both breasts through the opening for cleavage views. e) Rear Table Pillar Pad – additional cushion support when patient rests arm on pillar</p> <p>Additional Accessory Cushions: (2) Head/Face support cushions (1) Wedge cushion (1) Abdominal support cushion</p> <p>Arm Through Support Accessory: Fully-padded arm support that attaches to the C-arm for more comfortable and secure arm through procedures. Use with rounded square aperture and arm through pad for the table top.</p> <p>A rear step, metal-based platform with rubber matting, to assist in better patient positioning.</p> <p>A Rolling Storage Cart that neatly organizes all of the comfort package components - apertures, table pads, accessory cushions and the arm through support. Cart can roll to any location in the room and stores flush against the wall.</p> <p>Undertable C-Arm Assembly Total Access – 360° C-Arm rotation angle Independent Vertical C-Arm Motion – 8 inches Work Area Light - 2 adjustable halogen lamps on C-Arm Motorized &amp; Manual Compression Modes Cartesian Coordinate System w/SmartWindows Stereotactic Angle - +/-15° Accuracy - +/- 1.0 mm Needle Gun Holder</p>	\$259,000.00	\$155,000.00	\$155,000.00

<p><b>X-Ray Generator</b>  Constant Potential High Frequency, Inverter Type  kV Range – 22 – 34 kV  mAs Range – 3 – 400 mAs  Generator Control Unit - Handheld Controller w/LCD Screen</p> <p>Molybdenum, Rotating X-Ray Tube  Focal Spot Size – 0.25 mm square, nominal  Filtration – 30 microns Molybdenum, minimum  Port – Beryllium</p> <p>DSM System</p> <p>Digital Image Detector  Active Image Area – 6.8 x 6.8 cm @ phosphor screen  Image Display Resolution – 512 or 1024 pixel resolution  DSM Camera – CCD sensor coupled to high efficiency lens  Intensifying Screen – High efficiency front phosphor  Light Quantum Efficiency – 60% @ 550 nm  Magnification Factor – 1.327 measured from center of compressed breast  Pixel Resolution – 20.04 pixels/mm  Spatial Resolution – 9–10 lp/mm  Detective Quantum Efficiency (DQE) – High  CCD Sensor – Full-frame CCD  Pixel Count – 1024 (H) x 1024 (V)  Pixel Size – 24 mm (H) x 24 mm (V)</p> <p>Processing Station  Microprocessor – Pentium IV, 2.6 GHZ unit  Operating System – Windows XP  Archive Media – DVD+R/RW, CD-R/RW  Monitor - LCD Flat Panel  Display Area – 18" Diagonal (46 cm) min  Viewing Area – 160°, min  Resolution – 1280 x 1024, min  Brightness – 700 cd/m2, min</p> <p>Standard Accessories  Compression Paddles  17 cm S.S. Compression Biopsy  10 cm Auxiliary Biopsy</p> <p>Dual Function Footswitch  Refuse Tray  Pillow  Stool w/Backrest  Quality Assurance Needle  FNA Guide; Needle Loc Guide; 14G Needle Guides  Air Phantom  DICOM Print</p> <p>DSM Computer Table  Operator &amp; Service Manuals</p> <p>Installation included  Warranty - Standard 12 Months all Parts and Labor &amp; Glassware; after the Warranty Period, mammography x-ray tubes are warranted on a straight-line prorated basis during months 13-24. Warranty available Monday through Friday - 8 am to 5 pm local time except Hologic recognized holidays.</p> <p>NOTE: Hologic does not supply x-ray shielding with this product. Customer is responsible to provide shielding in accordance with their state regulatory agency.</p>			
<p>1 Initial Applications - MultiCare Platinum - Initial Applications per site - MultiCare Platinum  Three (3) days Applications Training for up to 3 Technologists and 3 Radiologists per site.</p> <p>Applications must be completed within 12 months of equipment shipment.</p> <p>Please note: Cancellations must be made 48 hours prior to the end of the business week before your scheduled applications to avoid cancellation fees.</p> <p>Initial Applications Added Value: \$5,100.00</p>	Included	Included	Included
<p>1 SFW-00097 - DICOM SOFTWARE FOR DSM</p> <p>Enables DSM users the ability to utilize additional DICOM service classes, in conjunction with their currently-existing DICOM print capability.</p> <p>Can be used with all systems using the LORAD DSM/Windows NT platform.</p> <p>Provides an interface with your PACS to perform DICOM functions including:</p> <ul style="list-style-type: none"> <li>· Verification</li> <li>· Modality Worklist Management</li> <li>· Store</li> </ul>	\$8,000.00	\$4,000.00	\$4,000.00

	• Storage Commit, and/or • Query/Retrieve		
1	Mammography Trade-In Allowance - Trade-In Allowance for Mammography System Trade-in Allowance for Mammography Systems		(S10,000.00) (S10,000.00)
		<b>Equipment Total:</b>	<b>S149,000.00</b>
		<b>List Price Total:</b>	<b>S267,000.00</b>
		<b>Discount:</b>	<b>(S118,000.00)</b>
		<b>Final Quote Price:</b>	<b>S149,000.00</b>

**Warranty Information:**

**SPECIAL GROUP BUY PROMOTION:** 15 Months Parts and Labor on all systems shipped by 08/31/2012.

**Notes:**

Hologic to pay freight.

Payment for Product: If you are being quoted "split payments" (0-80-20, or 20-60-20 for example) the first payment percentage is due with your order, the second payment percentage is due upon delivery, and the final payment percentage is due upon Hologic notification of installation, or delivery if Products are designated as buyer installed. Otherwise, payments are due in full as noted.

You may be eligible to lease 100% of the proposed equipment subject to current rates and credit approval. Contact your local account manager for details or call Patrick Dawkins, Lease/Financing Manager for Hologic at 781-761-7149.

**Hologic may request new customers and established customers to complete our credit application to create or update current credit files. This requirement will be contingent on order amount and prior history with Hologic.**

The parties acknowledge that they intend for purchases under this Quote to be reported to the identified group purchasing organization ("identified GPO") for payment of administrative fees in accordance with the applicable group purchasing organization contract between the identified GPO and Hologic. This Quote is not entered into, pursuant to, or in connection with any other group purchasing or IDN/System, arrangement of which Customer or Hologic is a party, and is not intended to result in the reporting of sales or the payment of administrative fees to any such organization other than the identified GPO.

The Customer agrees to treat all quoted and sales information as confidential and not to disclose it to any third party other than the identified GPO or as required by law.

In no event will Hologic be obligated to pay administrative fees to a group purchasing organization ("GPO"), integrated delivery network, or other entity other than the identified GPO with respect to any single purchase order by Customer, and whose Equipment and purchase options are not included in the separate GPO agreement between the identified GPO and Hologic.

Customer acknowledges that the pricing guaranteed under this Quote is strictly provided to Customer only because the pricing is based on the Customer's commitment related to quantity and commitment to Hologic products, and in no event shall Hologic be required to offer such pricing to any other customer who is in anyway affiliated with or is a member of the identified GPO.

Above mentioned GPO/IDN/System contractual terms and conditions supersede Hologic's standard terms and conditions if there are any conflicts.

**Buyer Acceptance:**

**Riverside County Regional Medical Center**

By: \_\_\_\_\_ (signature)

Name and Title: \_\_\_\_\_ (print/type)

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

**Additional Buyer Acceptance (if applicable):**

By: \_\_\_\_\_ (signature)

Name and Title: \_\_\_\_\_ (print/type)

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

FORM APPROVED COUNTY COUNSEL  
 BY: NEAL R. KIPNIS  
 DATE: 1/12/12

**Please provide the Shipping and Billing address here if different from the quote address above (If this section is left blank, the product will ship and bill to the address printed at the top)**

Shipping Address: \_\_\_\_\_ Billing Address: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Hologic Approval:  -

Date: Apr 06, 2012

HOLOGIC, INC. 35 CROSBY DRIVE BEDFORD, MA 01730 TEL: 781-999-7300



**The Hologic Master Sales Terms and Condition attached to Quote No. 176186  
are hereby deleted and replaced with the following  
Hologic Master Sales Terms and Conditions**

These Hologic, Inc. ("Hologic") Master Sales Terms and Conditions ("Terms") apply to the sale or use of Hologic equipment ("Equipment") and supplies ("Supplies") (Equipment, Supplies, and any included software, as defined in paragraph 13, collectively referred to as "Product" or "Products") between Hologic, its subsidiaries and affiliates, and Customer (collectively "Party" or "Parties"). The Parties, intending to be legally bound, agree as follows:

- 1. Agreement.** These Terms, along with any applicable Hologic quote(s) or other purchasing program documents executed by the Parties constitute the complete and entire agreement between Hologic and Customer (collectively referred to herein as the "Agreement"). This Agreement will supersede all other quotations, agreements, understandings, warranties and representations (whether written or oral) between the Parties with respect to the subject matter set forth in the Agreement. Any Customer documentation (including Customer's purchase order terms and conditions) that conflicts with or attempts to modify the Agreement in any way is hereby rejected and of no effect unless specifically agreed to in writing and signed by the Parties. No provision of this Agreement shall be waived, amended, modified, superseded, canceled, terminated, renewed, or extended except in a written document signed by both Parties or signed by the Party against whom the modification is sought to be enforced.
- 2. Prices.** Prices, fees and charges for Products and services (including maintenance, installation, and training as described in Hologic's then-published service description) ("Service" or "Services") are payable in United States (U.S.) Dollars only, and do not include any applicable taxes or shipping charges. If Customer claims any tax exemption, it must furnish a valid tax exemption certificate before shipment of Products. Unless price protection is explicitly agreed to by Hologic in writing, Hologic reserves the right to increase prices on thirty (30) days written notice to Customer.
- 3. Payment.** Unless otherwise agreed to in writing by Hologic, Customer shall pay invoices net thirty (30) days from the invoice date. Hologic may charge interest at the maximum rate permitted by law on all amounts not paid by the invoice due date. Hologic retains a purchase money security interest in all Equipment sold to Customer to secure payment of the total purchase price thereof; Customer hereby grants Hologic the right to file a copy of this Agreement, with any appropriate authorities, to evidence this security interest; Customer agrees to execute and deliver such other documents as Hologic may request in connection therewith. Hologic shall not be obligated to deliver any Product or perform any Service during any period when Customer payment is past due. Customer will be responsible for all costs (including reasonable attorneys' fees) incurred by Hologic to collect overdue payments and/or to take possession or otherwise dispose of Products for which payment is overdue.
- 4. Product Shipment and Risk of Loss.** Unless otherwise agreed to in writing by Hologic, all Products will be shipped F.O.B. Origin, regardless of any provisions for payments of freight, insurance, the form of shipping documents, or selection of carrier by Hologic. F.O.B. Origin means title to the Products passes to the Customer at the shipping dock of Hologic or Hologic's supplier or authorized agent. Customer is responsible for shipping charges. Hologic is responsible for the cost of insurance paid to cover any losses from Hologic's shipment point to Customer's receipt. Hologic will assist Customer in processing any loss claims and Customer will be paid directly by Hologic's insurer.
- 5. Installation and Acceptance.** Product orders are subject to written acceptance by Hologic, receipt of specified deposits, as applicable and continuing credit approval. Orders may be canceled by written notice to Hologic prior to shipment. If applicable, Hologic will install all Equipment that requires installation at no charge, at the agreed upon location. Unless otherwise specifically agreed, installation shall be complete and acceptance shall occur upon Hologic's demonstration that the Equipment meets Hologic's then-current specifications ("Installation"). Installation is subject to Customer cooperating in preparing and maintaining the site in compliance with Hologic specifications, including but not limited to, applicable regulations including all electrical and other connections and all environmental conditions. If Customer fails to accept shipment of Products, Customer shall immediately pay the full purchase price as if shipment and Installation had occurred, and if Hologic decides to store ordered Products, Customer shall be responsible for Hologic's reasonable insurance, handling and storage charges. If Hologic decides not to store ordered Products, it is hereby authorized to arrange shipment and storage in a bonded warehouse at Customer's sole risk and expense.
- 6. Delay of Performance.** The Parties' obligations under this Agreement are subject to force majeure, including but not limited to, civil insurrection, terrorism, fire, flood, labor disputes, shortages, delays of suppliers or contractors, or government priority systems, actions taken or threatened by any governmental agencies, acts of God or other contingencies or acts not within the sole control of Hologic. Hologic reserves the right during any shortage period to (a) make Supplies available to Customer (as it sees fit) without any liability to Customer, and (b) to make substitutions and modifications in the specification of any Products, provided such substitutions or modifications do not materially affect the performance of Products.

7. **WARRANTIES.** Products are warranted to the original Customer to perform substantially in accordance with published product specifications for one (1) year starting from the date of shipment, or if Installation is required, from date of Installation ("Warranty Period"). Digital imaging mammography x-ray tubes are warranted for twenty-four (24) months, during which the x-ray tubes are fully warranted for the first twelve (12) months and are warranted on a straight-line prorated basis during months 13-24. Replacement parts are warranted for the remainder of the Warranty Period or ninety (90) days from shipment, whichever is longer. Consumable Supplies are warranted to conform to published specifications for a period ending on the expiration date shown on their respective packages. Services are warranted to be supplied in a workman-like manner. Hologic does not warrant that use of Products will be uninterrupted or error-free, or that Products will operate with non-Hologic authorized third-party products. HOLOGIC'S ENTIRE WARRANTY RESPONSIBILITY IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (AT HOLOGIC'S OPTION AND IN THE FORM ORIGINALLY SHIPPED) OF PRODUCT OR CORRECTION OF SERVICE SUBJECT TO ANY CLAIM, OR, AT HOLOGIC'S ELECTION, REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE HOLOGIC PRICE, FEE OR CHARGE THEREFOR. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO, NOR MAY IT BE RELIED UPON BY, ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY ENTITY WHO HAS LESS THAN FIFTY (50) PERCENT OWNERSHIP IN THE PRODUCT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY, FROM STATE TO STATE. These warranties do not apply to any item that is: (a) repaired, moved, or altered other than by Hologic authorized service personnel; (b) subjected to physical (including thermal or electrical) abuse, stress, or misuse; (c) stored, maintained, or operated in any manner inconsistent with applicable Hologic specifications or instructions, including Customer's refusal to allow Hologic recommended Software upgrades; or (d) designated as supplied subject to a non-Hologic warranty or on a pre-release or "as-is" basis.
8. **Warranty Claims and Remedies.** In the event of any warranty claim, Hologic will replace with new or repaired items any Equipment part, component, or consumable supply that is in breach of warranty, and will use reasonable efforts to promptly fix or provide a workaround for any Software defect or bug which prevents operation in substantial conformity with functional specifications. Alternatively, Hologic may elect to repay or credit to Customer an amount equal to the purchase price of the defective Equipment, component, Software, consumable supply, or Service. Items replaced shall become Hologic property. All claims shall be initiated by contacting Hologic within the applicable Warranty Period and thirty (30) days after discovery of the breach or non-conformity. Hologic must be given reasonable access and an opportunity to inspect all associated materials. If Hologic and Customer are unable to settle any claim and Customer has not notified Hologic within one (1) year after the claim arises, Customer shall be barred from instituting any legal action thereafter. These remedies shall comprise Hologic's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity.
9. **LIMIT OF LIABILITY.** EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC'S NEGLIGENT OR INTENTIONAL WRONGFUL ACTS OR OMISSIONS, HOLOGIC SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, SERVICE OR USE OF PRODUCT ORDERED OR FURNISHED, OR FROM ANY CAUSE RELATING THERETO UNLESS EXPRESSLY AGREED TO BY THE PARTIES IN WRITING. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC'S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, IN NO EVENT SHALL HOLOGIC BE LIABLE UNDER ANY LEGAL THEORY OR FOR ANY CAUSE WHATSOEVER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, FOR ANY AMOUNT IN EXCESS OF THE PRICE, FEE OR CHARGE THEREFORE RECEIVED BY HOLOGIC.
10. **Insurance.** Hologic shall at all times during the term of this Agreement maintain in effect the following insurance with respect to Customer's location (i) worker's compensation insurance covering any and all of its employees, agents or representatives who may be providing services to Customer under the terms of this Agreement, in amounts and coverage complying with the requirements of the applicable state; (ii) general liability insurance covering the acts or omissions of Hologic and its employees, agents or representatives, and any and all Equipment and other personal property of Hologic; and (iii) products liability insurance. At Customer's request, Hologic shall provide a certificate of insurance to Customer.

11. **Governmental Authorizations.** Customer is responsible for compliance and costs associated with all required licenses, permits, or other governmental authorizations, including but not limited to, any license or certification needed for Customer to use the Product, and any export or import license, exchange permit, or the like ("Licenses"), even if applied for by Hologic on Customer's behalf. If any authorization is delayed, denied, revoked, restricted or not renewed, Hologic shall not be liable, and Customer is not relieved of its obligations. Customer represents and agrees that it will handle all Product and technical data related to the Licenses so that it conforms to all applicable U.S. laws and regulations, including U.S. export licensing laws and the U.S. Foreign Corrupt Practices Act. Customer shall not transship, divert, re-export or otherwise dispose of any U.S. origin goods or technology obtained from Hologic except as U.S. laws and regulations expressly permit.
12. **Intellectual Property Indemnity.** Hologic will defend, indemnify, and hold harmless Customer against any third-party claim that Customer's use of Products infringes a valid U.S. patent, copyright, or trademark, provided that: (1) Products are used as approved by Hologic and have not been altered other than by Hologic or its authorized service personnel; (2) Customer promptly notifies Hologic of such claim; (3) Hologic has sole control of the defense, settlement, or compromise thereof and Customer will be solely responsible for attorneys' fees and costs it incurs independently of Hologic's representation; and (4) Customer cooperates with Hologic and furnishes all aid, information, and assistance necessary or useful to defend such claim. If a final injunction is obtained against the Customer's use of any Product, or if in the opinion of Hologic the Product is likely to become the subject of a successful claim, Hologic may, at its option and in its sole discretion: (i) obtain for Customer the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) if neither (i) or (ii) are reasonably available, accept return of such Products held by Customer, grant a credit therefore as depreciated on a five-year straight-line basis, and terminate the Agreement without any further obligation or liability. The remedy selected by Hologic will be Customer's exclusive remedy for any damage, cost, or expense resulting from any court order or settlement enjoining Customer's use of the Product.
13. **Software License.** The term "Software" includes all Hologic (and third-party) computer software, firmware and associated documentation, whether in printed or machine-readable form supplied by reason of this Agreement or for use in connection with Equipment or Services. To the extent the Product includes Software, Customer is granted a non-exclusive, non-transferable, royalty-free license to use Software solely on the Equipment on which it is first installed or as designated in the Agreement, in connection with the Equipment in the normal course of Customer's business, and for no other purpose or business. No license is provided under this Agreement to use Software for multi-site quality control or data review purposes or for source code of any type. Software, at all times, shall remain the sole property of Hologic. Software is agreed to contain and shall be treated as confidential information. Customer shall maintain all copyright, proprietary, and other notices on the Software, and shall not de-compile, disassemble, or reverse engineer the Software. The Parties agree that all information needed for interoperability is available from Hologic in accordance with applicable government directives. From time to time Hologic may develop new versions or updates for this software. Customer agrees to allow Hologic access to the Equipment in order to implement any new versions or updates to the software. If Customer transfers Equipment to a third-party, Customer may assign the right to use Software on the Equipment; provided that, the third-party agrees in writing with Hologic to be bound by and to permit Hologic to enforce the provisions of this Section. Customer has no other right to use, sell, assign, transfer, copy, or sublicense Software. As identified in the applicable software product specifications, some third-party software vendors (including Microsoft Corporation) provide different warranties and require different or additional terms applicable to software which they supply; such warranties and terms supersede this Agreement and Customer agrees to abide by such terms with respect to such third-party software. The Microsoft End User License is located on the applicable installation CD-ROM (file name is EULA.txt).
14. **Confidential Information.** Both Parties agree to hold in strict confidence the terms of this Agreement and all information provided to the other in connection with the performance of their respective obligations under this Agreement, including without limitation, financial information and information relating to the Customer and pricing, except to the extent that disclosure is required by applicable law.  
Notwithstanding the above, the terms and conditions of this Agreement will not be disclosed to any third-party without the prior written consent of the other Party, except either Party may disclose the terms and conditions of this Agreement to its employees, professional advisors, agents or independent contractors that are providing contractual services for the applicable Party and who require the knowledge of the terms and conditions of this Agreement so long as such individuals are subject to applicable non-disclosure agreements.
15. **Intended Uses.** Products are only intended for the uses listed in the applicable operator's manual or instructions for use. Customer assumes all risks associated with non-listed uses of Products and hereby indemnifies and holds Hologic harmless from any claim associated with such non-listed uses.
16. **Compliance with Laws.** Hologic and Customer agree to comply with all federal and state laws that govern the enforceability and performance of this Agreement.
17. **HIPAA Compliance.** To the extent HIPAA (as defined below) applies, both Parties agree to comply with the applicable

provisions of the privacy regulations within the Health Insurance Portability and Accountability Act of 1996, as enacted in 45 C.F.R. parts 160, 162, and 164 and as codified at 42 U.S.C. §1320d, as amended from time to time ("HIPAA"). Hologic agrees that if it directly or indirectly gains access to Protected Health Information ("PHI") during any interaction with Customer it will keep the PHI confidential under the terms of this Agreement.

18. **State Reporting and Disclosure Laws.** Unless otherwise noted in this Agreement, the cost of any Product training provided by Hologic shall be included in the purchase price of the Product where applicable. Customer acknowledges and agrees that state reporting laws may require Hologic to disclose certain aspects of this arrangement.
19. **Fraud and Abuse.** Hologic hereby certifies that it is not currently a listed vendor in the: (a) Federal General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Presidential Executive Orders 12549 and 12689 "Debarment and Suspension;" and (b) in the Office of the Inspector General of the Department of Health and Human Services' "List of Excluded Individuals/Entities."  
Any discounted pricing terms offered under this Agreement may be a "discount or other reduction in price" under the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). Customer shall take all actions necessary to comply with the Anti-Kickback Statute discount safe harbor regulations, 42 C.F.R. § 1001.952(h), including but not limited to, (1) maintaining accurate records reflecting the pricing terms of items and Services purchased under this Agreement, (2) fully and accurately report any discount received under this Agreement if applicable, and (3) make available information provided to Customer by Hologic concerning cost reports and other filings with the government, including but not limited to, the Secretary of the U.S. Department of Health and Human Services or other state agencies.
20. **Access to Books and Records.** Until the expiration of four (4) years after the furnishing of Services under this Agreement, Hologic shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and such books, documents and records of Hologic as are necessary to certify the nature and extent of the costs hereunder. If Hologic carries out any of its duties under this Agreement through a subcontract, for the value or cost of \$10,000 or more over a twelve (12)-month period, with a related organization, such contract shall contain a clause placing the same duty on the subcontractor as the agreement places on Hologic. This clause shall survive the termination of this Agreement according to its terms. If the law or regulations are effectively amended to increase or decrease the annual amount necessary to require this clause, the amount set forth herein shall be amended accordingly. Notwithstanding the presence of this clause in this Agreement, this clause shall only apply if the actual dollar amount paid during any twelve (12)-month period equals or exceeds the government threshold amount.
21. **Bankruptcy.** Except as may be prohibited by applicable bankruptcy laws, a Party to this Agreement may elect to cancel any unfulfilled obligations if any of the following situations arise: (1) the other Party becomes insolvent or is unable to pay debts as they become due; (2) a voluntary or involuntary bankruptcy proceeding is instituted by or against a Party hereto; or (3) an appointment of a receiver or assignee for the benefit of creditors occurs on behalf of a Party hereto.
22. **Waiver and Severability.** If either Party fails to perform obligations under this Agreement, such nonperformance shall not affect the other Party's right to enforce performance at anytime. Waiver of any remedy or material breach of any subject matter contained in this Agreement shall not be viewed as a waiver unless agreed to by the Parties in writing. Each provision of this Agreement is separate and independent of one another, and the unenforceability of any provision will not affect the enforceability of any other provision. If any provision is held to be excessively broad or unenforceable, such provision shall be modified accordingly so that it is enforceable to the fullest extent possible by law.
23. **Assignment.** Customer shall not assign this Agreement without the prior written consent of Hologic, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, the rights and obligations herein will be binding upon the successors and assigns of Customer.
24. **Notices.** Any required notices will be given in writing, or by facsimile, to Hologic as set forth in the applicable Hologic quote or other purchasing program document.
25. **Governing Law.** Upon execution, this Agreement is considered to be a California contract, entered into in California, and shall be governed and viewed under the laws of California without reference to its conflict of laws provisions. Customer and Hologic specifically agree that any action relating to the relationship between the Parties, the Agreement, or Products provided, purchased or licensed hereunder, shall be brought and tried in the Courts of California. Customer hereby waives all objections to, and consents to the jurisdiction of the California Courts.
26. **Miscellaneous.** See applicable Hologic quote or purchasing program for other terms and conditions, which may include, but are not limited to: **Term, Termination, and Right of Returns or Cancellation.**

AGREED TO:

Riverside County Regional Medical Center

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

Hologic, Inc.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

FORM APPROVED COUNTY COUNSEL

BY:

*Neal R. Kipnis* / 12/12

NEAL R. KIPNIS

DATE



# MAINTENANCE AGREEMENT

**Agreement Number: 052312-17686 MedAssets**

**Location:** Riverside County Regional Medical Center  
26520 Cactus Ave.  
Moreno Valley, CA 92555

We are pleased to offer you the services listed below on the condition that the terms hereof are the exclusive terms of sales. This quotation supersedes all previous quotations for these services. This offer shall remain open for 45 days after the quotation date unless otherwise specified and is subject to change or withdrawal by Hologic prior to acceptance. To accept this offer, please sign and return the first page hereof within the time period for acceptance.

**ATTN:** Debbie Christianson

QUOTATION DATE	HOLOGIC REPRESENTATIVE	BILLING FREQUENCY	CUSTOMER PO	CONTRACT TYPE	START DATE	
5/23/2012	Wisner/Velasco/Sneed	Annual		Point of Sale	On Warranty Expiration	
Model	S/N	Service Type	Annual Price	Effective Dates	Term	Total
Multicare Platinum		Gold	\$14,680.00	to	4.00	\$58,720.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
				to		\$0.00
<b>Subtotal All Products:</b>						\$58,720.00
<b>Discounts and Allowances or Surcharges:</b> MedAssets Four Year Agreement Discount						(\$8,808.00)
Additional discount valid only if this agreement is signed at time of equipment purchase; first annual payment not due until end of warranty.						(\$2,936.00)
<p>This agreement may be cancelled at any time with no penalty with 60 days notice. A refund will be given for any payments for time that is not used.</p> <p>For specific items covered under the Maintenance Agreement please refer to Modality Specific Attachment.</p> <p>Hologic is required by law to collect all state and local taxes on all sales. Final invoices will include these amounts, unless an exemption certificate is provided. Hologic Service Agreement Terms &amp; Conditions are part of this Agreement.</p>						
<b>Total All Products:</b>						\$46,976.00
<b>4 Annual Payment at:</b>						\$11,744.00

**CUSTOMER ACCEPTANCE:** By signing below, Customer indicates acceptance of this quotation and agrees to be bound by all the terms and conditions of sale contained on page 2 of this document, including (but not limited to) the warranty limitations set forth in section 8. Upon acceptance by an authorized representative of Hologic, this document shall constitute a binding contract between Customer and Hologic.

**Bill To: Customer Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_  
**Authorized Signature:** \_\_\_\_\_  
**Telephone Number:** ( ) \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Submitted by Hologic: Eli Wisner, Manager, Service Sales**  
**Representative:** \_\_\_\_\_ **Tel (408) 352-0150 Fax (866) 630-5707**  
**Date:** \_\_\_\_\_

**Acceptance by Hologic:**  
**Authorized Signature:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**THIS IS NOT AN INVOICE. FINAL INVOICE WILL BE GENERATED UPON SUBMISSION OF SIGNED AGREEMENT.**



## HOLOGIC SERVICE AGREEMENT TERMS & CONDITIONS

- 1. PRICES & PAYMENT.** Customer agrees to pay HOLOGIC the charges set forth on page one hereof. Customer agrees to reimburse HOLOGIC for any costs associated with collecting delinquent payments. All payments are due thirty (30) days from the date of Invoice. Invoices shall reference the applicable Customer Purchase Order Number and specify the coverage period.
- 2. TAXES.** Customer agrees to pay taxes and government charges, however designated (excluding taxes on HOLOGIC's net income) imposed or based upon the provision of or payment for Services hereunder.
- 3. DESCRIPTION OF SERVICE.** During the term hereof, HOLOGIC will provide the maintenance services set forth on page one hereof, subject to the exclusions set forth in Section 4.
  - A. Eligibility: Prior to acceptance of the Agreement, HOLOGIC reserves the right to perform, at its expense, a Pre-Contract inspection of the Equipment listed on the page one hereof (the "Equipment"). HOLOGIC shall not be obligated to maintain any Equipment, which, in its sole opinion, fails to conform to customary standards of configuration, performance, manner of use, or installation.
  - B. Coverage: Subject to the terms and conditions set forth herein, HOLOGIC will provide hardware and software maintenance service for the Equipment based on the service level description and Equipment location listed on page one hereof.
  - C. Service Requests: All service requests shall be made by telephone to 1-800-321-4669 for DEXA and Fluoroscan equipment, 1-888-505-7910 for Analog Mammography equipment, 1-800-537-3880 for MRI equipment, 1-877-371-4372 for DR, Digital Mammography and SSI Ultrasound equipment, 1-877-887-8767 for Siros, 1-866-735-3744 for Sentinelite or 1-866-243-2533 for R2 Analog CAD equipment (or other such telephone number as HOLOGIC may specify). HOLOGIC will use reasonable efforts to meet response times listed in the applicable service description, but will not be liable for failure to do so.
  - D. Telephone Support: HOLOGIC will provide Customer with access to telephone support for Equipment operation, application usage, and applicable technical or scientific information. The telephone number and hours described in 3.(C) above shall apply.
  - E. Parts: Parts and components used to maintain or repair Equipment may be new or remanufactured and will meet HOLOGIC's performance specifications. Title to defective parts requiring replacement shall remain with HOLOGIC.
  - F. Records: HOLOGIC will maintain a complete Maintenance Service Log that will include the following information for all Equipment: model and serial number; date and time service call received; nature of service call; date and time service performed; description of repair, including parts or components replaced; dates of preventative maintenance.
- 4. EXCLUSIONS.** The following services are not covered by this Agreement and if performed by HOLOGIC or its representatives, and shall be invoiced separately at the applicable time and material rates.
  - A. Services performed at Customer's request outside the Standard Hours established by 3.(B), above, time/labor for such services will be billed at 150% of prevailing rates for services performed outside standard hours on weekdays, and 200% of prevailing rates for such services performed on weekends and holidays.
  - B. Services required due to catastrophe, disaster, acts of God, and environmental problems, including without limitation failures to provide (or failures of) adequate electrical power, air conditioning, or humidity control which do not result from the acts or omissions of HOLOGIC or its representatives.
  - C. Services required due to Customer's use of Equipment in any manner or for any purpose that is inconsistent with instructions documented in HOLOGIC's Operations Manual or published supplements thereto.
  - D. Services required due to unauthorized attempts by persons other than HOLOGIC or its designated representatives to maintain, modify, move or repair the Equipment.
  - E. Services required due to the installation of accessories, attachments, or third party software not specifically covered under this agreement.
  - F. Dismantling and reinstallation services, and any other services required in connection with relocation or movement of the Equipment.
  - G. Services required due to electrical work or cabling external to the Equipment and not resulting from the acts or omissions of HOLOGIC or its representatives.
  - H. Services provided as a result of changes in laws, regulations or guidelines.
- 5. ADDITIONAL DUTIES OF HOLOGIC.**
  - A. Personnel: HOLOGIC will use its best efforts to maintain a staff of employees qualified to perform the services required hereunder. In addition or in lieu of this, HOLOGIC may elect, at its discretion, to use appropriately qualified subcontractors to provide services.
  - B. Customer's Rules: HOLOGIC employees and representatives will observe and comply with Customer's reasonable rules and regulations while on Customer's premises.
- 6. DUTIES OF CUSTOMER.**
  - A. Supervision: Customer alone is responsible for the supervision, management and control of Equipment use, including, without limitation; providing all controls and review of techniques and other measures for promptly detecting and minimizing the effects of any errors, failures, or interruptions that may occur during use.
  - B. Access: Customer shall provide reasonable access to the Equipment, and reasonable working space and conditions for HOLOGIC's employees and representatives providing services hereunder.
  - C. Missed Visits: If Customer is not at the location to provide HOLOGIC's representatives access for a scheduled visit (remedial or preventative), Customer will be charged for labor and travel expenses at then current rates.
  - D. Confidentiality: Customer agrees that all HOLOGIC-furnished information, software, manuals, devices, and all other materials which are identified as "Confidential" information or the like, contain valuable proprietary information, and Customer shall hold such information in confidence and not use, reproduce or distribute it except to Customer's employees (and agents who agree to this provision) who may use it as part of their duties.
- 7. TERMS AND TERMINATION.** This agreement shall be in effect for the term set forth on the page one, except as provided below.
  - A. At-Will Termination: Either party may terminate the Agreement, at its discretion, by giving at least 60 days advance written notice to the other party.
  - B. Renewal: Both parties may elect to renew this Agreement for additional one-year periods, following immediately upon prior coverage period, at HOLOGIC's then current rates and terms for such extensions, without pre-contract inspection, by notifying HOLOGIC, in writing, thereof at least (30) days prior to expiration of the then-current term.
  - C. Default: Either party may terminate this agreement upon written notice to the other, if the other party has substantially breached a material provision hereof and has failed to correct the breach within (1) 10 days of notice, for failure to make any payment due, or (2) 30 days, for other breaches. HOLOGIC shall not be obligated to perform services during any period in which a Customer payment is past due.
  - D. Effects of Termination: If this agreement is terminated prior to expiration of the then-current term, other than by HOLOGIC on the grounds of any uncorrected breach by Customer, then the prorated and unused portion of the Customer's annual prepayment shall be refunded to the Customer. Contract must be paid in full up to and including final coverage date.
- 8. WARRANTY.**
  - A. Warranty: Services are warranted for thirty (30) days to be supplied in a workmanlike manner. Replacement parts for Equipment and Software will be supplied on an exchange basis, may be new or remanufactured, and are warranted to perform in accord with published product specifications for ninety (90) days from delivery. HOLOGIC warrants that the Customer will receive good title for all parts furnished in providing covered services hereunder, free from all liens, charges, and encumbrances.
- 9. LIMITATION OF WARRANTY AND LIABILITY.**
  - A. Limitation of Warranty: THE FOREGOING WARRANTIES ARE IN LIEU OF AND HOLOGIC EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.
  - B. Limitation of Liability: IN NO EVENT SHALL HOLOGIC BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF GOOD WILL, LOSS OF PROFIT, LOSS OF USE, OR INTERRUPTION OF BUSINESS, OR FOR ANY CLAIMS MADE MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION OCCURRED. IN NO EVENT SHALL THE DAMAGES ASSESSED AGAINST HOLOGIC FOR ANY CLAIM OR CLAIMS HEREUNDER EXCEED THE TOTAL MAINTENANCE CHARGE HOLOGIC RECEIVED FROM THE CUSTOMER FOR THE MOST RECENT ANNUAL PERIOD.
  - C. Contingencies: After utilizing reasonable efforts to avoid the event, HOLOGIC shall be excused for performance, and shall not be liable for any delay or non-performance caused by the occurrence of contingencies beyond its control, including without limitation, war, sabotage, insurrection, riot, civil disobedience, failure or delay in public transportation, acts of any government or subdivision thereof that interfere with performance, judicial action, delay or nonperformance of suppliers, unavailability of spare parts, labor disputes, accident, fire, flood, storm, volcanic eruption, or other acts of God.
- 10. ASSIGNMENT.**
  - A. By Customer: Customer may not assign or transfer this agreement without prior written consent from HOLOGIC.
  - B. By HOLOGIC: HOLOGIC may assign its rights or obligations, or both, or delegate or subcontract its responsibilities, under this agreement entirely at its discretion, to any person, provided that any assignee must assume the applicable obligations in writing.
- 11. SOFTWARE LICENSE.**

"Software" includes all HOLOGIC and third-party computer software, firmware, and associated documentation, in printed or machine-readable form, supplied by reason of this Agreement or for use in connection with the Equipment or Services. Customer is granted a non-exclusive, non-transferable, royalty-free license to use Software solely on Equipment on which it is first installed or as designated in the Agreement in connection with such Equipment, in the normal course of Customer's business, and for no other purpose. No right of use is provided for source code or to use Software for multi-site quality control or data review. Software is and shall remain the sole property of HOLOGIC. Customer shall maintain all copyright, proprietary and other notices on Software, and not decompile, disassemble or reverse engineer Software. (All information needed for interoperability is available in accord with applicable government directives.) Customer has no other right to use, sell, assign, transfer, copy or sublicense Software.
- 12. DISPUTES.** This agreement is deemed to be entered into in Massachusetts and to be a Massachusetts contract and shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. HOLOGIC and Customer specifically agree that any legal action brought relating to this agreement will be brought and tried in Massachusetts. All objections to venue are hereby waived by Customer, and Customer consents to service of process by certified mail addressed to the same addressee as that designated for notices. Notwithstanding the above, HOLOGIC shall have the right to bring any action or proceeding against Customer in the courts of any jurisdiction where Customer is located.
- 13. GENERAL.**
  - A. Waiver: The failure of either party at any time to require performance by the other party of any of its obligations thereunder shall in no way affect the full right to require such performance at any time thereafter. The waiver by either party of any remedy with respect to a breach of any provision shall not be taken as a waiver of a remedy with respect to any succeeding breach of that or any other provision.
  - B. Severability: The parties agree that each provision contained in these Terms and Conditions shall be treated as a separate and independent clause, and the unenforceability of any one clause shall not impair the enforceability of any other clause. Moreover, if one or more provisions contained in these Terms and Conditions shall for any reason be held to be overly broad so as to be unenforceable, such provisions shall be construed by the appropriate judicial body by limiting and reducing them, so as to be enforceable to the extent compatible with the applicable law.
  - C. Modification: These Terms and Conditions may not be modified except by a written agreement referring specifically to these Terms and Conditions and signed by authorized representatives of the parties. Any provisions of Customer's purchase order that are inconsistent with the foregoing shall be of no force or effect, unless HOLOGIC shall have expressly agreed to a modification of these Terms and Conditions.
  - D. Notices: All notices provided for in this agreement shall be in writing, addressed to the appropriate party at the respective address set forth above or any then-current address of which it has received notice, and delivered in person or by overnight mail or courier, telex or telecopy, or other means providing proof of delivery.