

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

165



FROM: Riverside County Regional Medical Center (RCRMC)

SUBMITTAL DATE:
April 23, 2013

SUBJECT: Approval of Beckman Coulter, Inc. as Sole Source vendor for Reagents and Consumables for Hematology Analyzer for Riverside County Regional Medical Center (RCRMC).

RECOMMENDED MOTION: Move that the Board of Supervisors:

- 1) Authorize the Chairman of the Board to approve the Sole Source procurement of Reagents and Consumables for Hematology Analyzer from Beckman Coulter, Inc. for the annual amount of \$57,954.24 per year for a period of 12 months renewable in 4 additional 12 month terms.
- 2) Authorize the Purchasing Agent to sign maintenance agreements for years 2 – 5 at \$14,500.00 per year.
- 3) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to sign amendments that do not change the substantive terms of the agreement for up to ten percent the maximum contract amount.

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 57,954.24	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

SOURCE OF FUNDS: 100% Enterprise Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Debra Courmoyer*
Debra Courmoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: April 23, 2013
xc: RCRMC, Purchasing

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

3-47

Prev. Agn. Ref.:

District: A11

Agenda Number:

FORM APPROVED COUNTY COUNSEL
 BY: NEAL R. KIPNIS
 DATE: 4/23/13
 Purchasing: Mark Seller, Assistant Director
 Departmental Concurrence
 Policy Policy
 Consent Consent
 ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
 Per Exec. Ofc.:

BOARD OF SUPERVISORS

Form 11

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SUBJECT: Approval of Beckman Coulter, Inc. as Sole Source vendor for Reagents and Consumables for Hematology Analyzer for Riverside County Regional Medical Center (RCRMC).

BACKGROUND:

The reagents and consumables are required for patient care at Riverside County Regional Medical Center to provide physicians with critical information for assessing patient health condition. These reagents and consumables are required to perform testing of blood specimens in support of the emergency, surgical, medical and outpatient services and must be reliable and provide accurate test results quickly and economically. The reagents and consumables are specific to the Beckman Coulter Unicell DXH 800 Hematology analyzers and no other vendor is authorized to provide these products.

PRICE REASONABLENESS:

The price that is being offered to RCRMC includes GPO MedAssets price reduction of 9% for reagents and consumables for hematology analyzers and is equal to or lower than what is offered to other Hospitals and Government agencies. Additionally, discounts for equipment results in the county receiving Two (2) Unicell DXH 800 Platform valued at \$110,000.00 each and trade-in of Two (2) LH750 w/slide makers valued at \$10,000.00 each at no cost to the county.

FINANCIAL IMPACT:

100% Hospital Enterprise Funds

REVIEW/APPROVAL:

County Counsel and County Purchasing

Date: April 2, 2013
From: Douglas D. Bagley, Hospital Director
Riverside County Regional Medical Center
To: Board of Supervisors
Via: Purchasing Agent
Subject: Sole Source Procurement; Reagents and Consumables for Hematology Analyzers

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:** Reagents and Consumables for Hematology Analyzer
2. **Supplier being requested:** Beckman Coulter, Inc.
3. **Alternative suppliers that can or might be able to provide supply/service:**
None
4. **Extent of market search conducted:** Government Purchasing Organizations (GPO), Internet and trade journals.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Beckman Coulter, Inc. will provide at no cost to the county, Two (2) Unicell DXH 800 Platforms valued at \$110,000.00 each and trade-in of Two (2) LH750 w/slide makers valued at \$10,000.00 each.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** Zero cost to the county for the new analyzers and the trade in value of current analyzers which no other vendors will provide. Built in lean efficiencies, latest technology and system engineering to help reduce pinch valves, 70% reduced tubing, and 40% fewer parts.
7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The price that is being offered to RCRMC includes GPO MedAssets price reduction of 9% for reagents and consumables for hematology analyzers and is equal to or lower then what is offered to other Hospitals and Government agencies. Additionally, discounts for equipment results in the county receiving Two (2) Unicell DXH 800 Platform valued at \$110,000.00 each and trade-in of Two (2) LH750 w/slide makers valued at \$10,000.00 each at no cost to the county.
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).** Yes. Annual purchase of consumables must be \$57,954.24 and Maintenance agreement for years 2 - 4 at \$14,500.00 per year.
9. **Period of Performance:** Initial term of 12 months renewable in 4 additional 12 month terms.


Department Head Signature

3/27/13
Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ _____

One time

Annual Amount through _____

Purchasing Agent



Date

4-8-13

Approval Number

(Reference on Purchasing Documents)

13-424 & 13-424 A

Expressly Prepared For:

RIVERSIDE COUNTY REGIONAL MED CENTER
26520 CACTUS AVE
MORENO VALLEY, CA 92555-3927



250 South Kraemer Boulevard
P.O. Box 8000
Brea, California 92821-8000

AGREEMENT

Proposal Expiration Date: May 30, 2013

GPO Affiliation: MEDASSETS
Contract #LB-01038

BCI Customer Number: 3765

Initial Agreement Term: 12 months

BM Quote Number: 105822927

ATTACHMENT A

CUSTOMER BILL TO:

6083
RIVERSIDE COUNTY REGIONAL MED CENTER
26520 CACTUS AVE
MORENO VALLEY, CA 92555-3927

CUSTOMER SHIP TO:

6083
RIVERSIDE COUNTY REGIONAL MED CENTER
26520 CACTUS AVE
MORENO VALLEY, CA 92555-3927

Beckman Coulter Representative(s):

Brianne Eaton

Initial Agreement Term:

12 months.

Initial Pricing Tier:

Tier 6

PRODUCTS AND SERVICES

EQUIPMENT:

Part #	Equipment Description	Type	Acquisition Option	Qty	List Price	Your Price	Extended Price
628134	SALES GROUP TN, UNICEL DXH 800 W/FLOORSTAND 120VAC/60HZ/NA	New	Purchase	1	\$229,000.00	\$110,000.00	\$110,000.00
628134	SALES GROUP TN, UNICEL DXH 800 W/FLOORSTAND 120VAC/60HZ/NA	New	Purchase	1	\$229,000.00	\$110,000.00	\$110,000.00
Subtotal:							\$220,000.00
6605632	LH 750 w/ Slide Maker/AJ33587/AJ36160	Trade-in	NA	1	NA	NA	-\$10,000.00
6605632	LH 750/AJ33588	Trade-in	NA	1	NA	NA	-\$10,000.00
Trade In Credit:							-\$20,000.00
Value Bond #1065:							-\$200,000.00
Total Purchase Price:							\$0.00



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CONSUMABLES:

Part #	Consumable Description	Price Per Unit	Qty Per Year	Annual Dollar Amount
628019	FP, DXH CELL LYSE, 5L	\$320.00	47	\$15,040.00
628020	FP, DXH DIFF PACK	\$133.33	68	\$9,066.44
628021	FP, DXH RETIC PACK	\$355.56	10	\$3,555.60
628023	FP, DXH CLEANER, 10L	\$71.11	45	\$1,350.00
628026	FP, S CAL CALIBRATOR	\$75.56	4	\$302.24
A59925	FP, 6C CELL CONTROL 9X	\$195.56	48	\$9,386.88
628024	FP, LATRON CONTROL	\$173.33	24	\$4,159.92
628029	FP, LINEARITY CONTROL	\$288.89	4	\$1,155.56
628017	FP, DXH DILUENT, 10L	\$16.67	1076	\$12,105.00
7547180	WRIGHT STAIN BUFFER	\$83.30	22	\$1,832.60

Minimum Annual Commitment: \$57,954.24

SERVICES:

Annual Service Pricing per Equipment Quantity								
Equipment Description	Service Type	List Price	Year 1	Year 2	Year 3	Year 4	Year 5	Years (6-7)
SALES GROUP TN, UNICEL DXH 800 W/FLOORSTAND 120VAC/60HZ - New	8x5	\$18,440.00	Warranty	\$14,500.00	\$14,500.00	\$14,500.00	\$14,500.00	NA
SALES GROUP TN, UNICEL DXH 800 W/FLOORSTAND 120VAC/60HZ - New	8x5	\$18,440.00	Warranty	\$14,500.00	\$14,500.00	\$14,500.00	\$14,500.00	NA
Total Service Payment								\$116,000.00

TRAINING:

Equipment Description	No. Training Slots
SALES GROUP TN, UNICEL DXH 800 W/FLOORSTAND 120VAC/60HZ	2



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SPECIAL PROVISIONS

The Equipment price includes a credit toward your interface costs of up to \$15,000.00. Beckman Coulter will apply a credit to your account after receiving the invoice showing the interface charges applicable to the Equipment.

This Agreement cancels and supersedes contract no(s). 43050US as of the Acceptance Date.

Equipment will be shipped F.O.B. destination with all costs of transportation and insurance being paid by Beckman Coulter as long as the Equipment is shipped using Beckman Coulter's standard shipping schedule and method.



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Initial Agreement Term: 12 months

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Your execution and delivery to Beckman Coulter of a copy of this Agreement will constitute your acceptance of this Agreement, including Attachment A. This Agreement is effective only when signed by you prior to the proposal expiration date indicated above and by an authorized Beckman Coulter representative at Beckman Coulter's corporate offices. Beckman Coulter reserves the right to withdraw this Agreement at any time prior to the Effective Date.

Customer Authorized Signature	Date	Purchase Order No	Begin Ship Date
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Beckman Coulter, Inc. hereby accepts this Agreement.

Beckman Coulter Authorized Signature	Beckman Coulter Authorized Print Name	Date
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PURCHASE AGREEMENT

This agreement ("**Agreement**") is between the customer identified RIVERSIDE COUNTY REGIONAL MED CENTER at the "Bill To" address listed on Attachment A ("**Customer**", also "**you**" or "**your**,") and Beckman Coulter, Inc. ("**Beckman Coulter**" also "**our**," "**we**" or "**us**") and contains the terms and conditions that will apply for you to obtain the Products and Services.

1. Definitions. All capitalized terms will have the meaning assigned to them in this Agreement.

1.1

"**Consumables**" means the reagent test kits and supply items listed in Attachment A.

1.2 "**Effective Date**" means the date an authorized Beckman Coulter representative at Beckman Coulter's corporate offices signs this Agreement.

1.3 "**Equipment**" means the instruments and the related items supplied with the instrument listed in Attachment A.

1.4 "**Initial Term**" means the time period between the Effective Date and ending the number of months indicated on this Agreement 1 year after all the Equipment is installed.

1.5 "**National Agreement**" means the group purchasing agreement between Beckman Coulter and MedAssets, contract number LB01038, effective on January 1, 2011, and any subsequent amendments to it.

1.6 "**MedAssets**" means MedAssets Supply Chain Systems, LLC.

1.7 "**Product**" means Equipment and Consumables.

1.8 "**Services**" means the services plan listed in Attachment A.

1.9 "**Software**" means any software listed in Attachment A.

2. Term; Termination. This Agreement begins on the Effective Date and ends the number of months specified in Attachment A, measured from 60 days after Beckman Coulter have installed the last piece of Equipment (the "Initial Agreement Term"). The Initial Agreement Term will automatically renew for additional successive one year terms, unless terminated by either party upon 90 days' written notice of termination prior to the expiration of the then current term (the Initial Agreement Term and any renewal term, collectively the "Term"). Beckman Coulter has the right to withdraw, upon notice to you, any term or condition stated in this Agreement at any time prior to Beckman Coulter signing it.

3. National Agreement. You are entitled to all benefits granted to Members as defined by and under the terms of the National Agreement. If there is a conflict, the following order of documents will be used to resolve the conflict: (1) Attachment A attached to this Agreement or the applicable quote; (2) the body of this Agreement; and (3) the National Agreement. No other documents from either party will have any legal effect. If the National Agreement is terminated, you cease to meet all the requirements under the National Agreement, or you designate a group purchasing organization other than MedAssets, you will no longer be entitled to the benefits granted to Members under the National Agreement for the remaining term of this Agreement.

4. Products. You will purchase from Beckman Coulter and Beckman Coulter will supply you with the Products during the

term of this Agreement at the prices indicated in Attachment A. The price of the Equipment includes all software upgrades, mandated by the FDA or required to keep the equipment operating as provided in its operating manual.

5. Services. You will purchase from Beckman Coulter and Beckman Coulter will provide you the Services at the prices listed in Attachment A. Unless you are paying for the Services monthly as specified in Attachment A, you must pre-pay your service fees on an annual basis. Telephone hot-line support for your Equipment is only available to you if your Equipment is under warranty or you have purchased Services from Beckman Coulter. Unless specifically stated otherwise, you are purchasing Beckman Coulter's standard business hour service plan, which includes 24 x 7 telephone technical support and, as required, parts, labor, and travel for on-site service calls during Beckman Coulter's normal business hours. Other limitations and exclusions apply as further described in Beckman Coulter's service description manual. Beckman Coulter's nonstandard service plans, including applicable limitations and exclusions, are also described in Beckman Coulter's service description manual. You will make the Equipment available to Beckman Coulter at the agreed upon service time or pay Beckman Coulter an additional charge based on Beckman Coulter's prevailing service rates for the service call. Service fees do not include (a) moving, re-installing, de-installing, or decontaminating of the Equipment or (b) service on any uninterruptible power systems, line conditioners, or laboratory information services. If you (a) do not perform the routine maintenance on the Equipment described in the operator manual, (b) move the Equipment without Beckman Coulter's authorization, or (c) the Equipment is damaged by you or damage to the Equipment results from an event outside of Beckman Coulter's control, Beckman Coulter may cancel the Services portion of this Agreement or charge you its then current time and material rates to restore the Equipment to its manufacturing specifications before resuming its obligation to provide the Services. If Beckman Coulter's remote management software, including diagnostics and other services, is available for the Equipment, including PROService, you must maintain and provide network or other Internet access to the Equipment so Beckman Coulter can remotely access the Equipment. If Beckman Coulter provides you additional equipment for the remote diagnostics and services capability, you agree that Beckman Coulter retains ownership of the equipment.

6. Price. Your price for any Product or Service will be the price stated in Attachment A. The pricing in this Agreement will not change until the earlier of February 28, 2015 or expiration or termination of the National Agreement. After this period and each year thereafter, Beckman Coulter will have the right to increase prices by the rate of inflation as indicated in the medical care expenditure category in the Consumer Price Index for all Urban Consumers (unadjusted) or 3%, whichever is less. If you inform Beckman Coulter that the price for any Product or Service is greater than the price for that Product in the National Agreement and the Product price does not include something not included in the price under the National Agreement, Beckman Coulter will change the price of the Product to the price in the National Agreement within 60 days of your notice to Beckman Coulter. In addition to the stated prices and any shipping or other charges specified in this Agreement, you must pay for all sales, use, and excise taxes and fees imposed on the sale or use of the Products and any other governmental charges imposed on Beckman Coulter relating to the sale of the Products. If the Equipment price includes a trade-in credit, you must deliver or make the trade-in available for pickup, as instructed by Beckman Coulter, within 30 days of the Equipment being installed, or Beckman Coulter may charge you for amount of the trade-in credit. Beginning on the first anniversary of the date the last piece of Equipment is installed and each anniversary thereafter, you or Beckman Coulter may renegotiate this Agreement if your annual Consumable volumes substantially decreased over the prior year and the requesting party gives written notice within 30 days after the anniversary date of the intent to renegotiate.

7. Pricing Tier. Your initial pricing tier is as specified in Attachment A and is based upon the tiered pricing in the National Agreement. By entering into this Agreement, you are agreeing to purchase from Beckman Coulter during each year of the term of this Agreement an amount of Products equal to or greater than the minimum total volume of Products specified for the corresponding tier in the National Agreement. Beginning on the first anniversary of the Effective Date and as long as the National Agreement is in effect, you may adjust your pricing to a higher tier once per 12 month period if (1) Beckman Coulter is able to verify that your purchase volume during the previous year makes you eligible for a higher tier under the National Agreement and (2) you commit to meet or exceed the minimum volume for the higher tier during the remaining term of this Agreement. After Beckman Coulter receives your notice and commitment, Beckman Coulter has 60 days to verify your actual purchase volume and, if your eligibility is verified, change your prices to the applicable tier. If at the end of each year of the term of this Agreement, your purchase volume does not meet or exceed the tier then in effect for the applicable year, Beckman Coulter shall have the right, but not the obligation, to change your pricing to a lower tier and/or extend the term of the Agreement until you have purchased an amount equal to the difference between the minimum volume of the tier that you agreed to meet and your actual purchases.

8. Training. As part of the price of certain Equipment, Beckman Coulter will provide you with Beckman Coulter's factory-based customer training for the number of your key equipment operators specified in Attachment A. At least one key operator from your staff must attend the specified training within 60 days from the date of the Equipment is installed or as soon thereafter as possible if Beckman Coulter does not have available training slots during that period. If Beckman Coulter, in its sole discretion, determines that additional training is necessary, Beckman Coulter will provide the training at Beckman Coulter's convenience. Training will include tuition, appropriate course materials, which may be in electronic media, and reasonable airfare, lodging, and meals. You must pay all your other transportation, incidental, optional, and personal expenses. All persons you designate for the training must have sufficient qualifications and expertise to operate the Equipment. Subject to applicable law, you may access any other training and educational program generally offered by Beckman Coulter to its customers.

9. Payment Terms; Collection Costs. Payment terms are net 30 days from the date of Beckman Coulter's invoice. If, for any reason, you do not pay Beckman Coulter by the due date, Beckman Coulter will be entitled to charge you a late fee and interest on all amounts due of the lesser of Beckman Coulter's standard rate or the maximum legal interest rate. Upon default, you agree to pay all collection costs Beckman Coulter incurs, including without limitation reasonable attorneys' fees and expenses.

10. Shipping Terms; Risk of Loss. Except as otherwise provided below, Beckman Coulter will ship the Equipment F.O.B. destination and all costs of transportation and insurance will be paid by Beckman Coulter. One shipment per month of Consumables ordered by you using Beckman Coulter's electronic commerce site shall be F.O.B. destination and all costs of transportation and insurance will be paid by Beckman Coulter. For Consumables not available from Beckman Coulter's electronic commerce site, one shipment per month of Consumables ordered by you shall be Net F.O.B. destination, with all costs of transportation and insurance being paid by Beckman Coulter, as long as the Consumables are put on a standing order and shipped using Beckman Coulter's standard shipping method and as long as you do not change your standing order or the predetermined ship schedule more than once per year. All other shipments of Products shall be F.O.B. destination with all costs of transportation and insurance being prepaid by Beckman Coulter and invoiced to you, except for special delivery or air shipments requested by you or shipping requests that require special handling or modes of shipping that are different than Beckman Coulter's standard protocol or procedure for such Products. These special shipment requests shall be F.O.B. shipping point, with all costs of transportation and insurance being prepaid by Beckman Coulter and invoiced to you. Beckman Coulter may charge you a reasonable fee for any of your requests that require Beckman Coulter to specially handle the Product order or shipment. Except for Products delivered F.O.B. shipping point, as provided above, title and risk of loss shall transfer to you upon delivery. Acceptance of any Product is deemed to have occurred when Beckman Coulter can certify that the Product conforms to its manufacturing specifications. You must report any missing or defective Product within 30 days from your receipt of the Product.

11. Delivery; Installation. Beckman Coulter will use reasonable commercial efforts to ship Equipment on or before the agreed upon date and Consumables within seven business days of its receipt of your order. Beckman Coulter may deliver in installments, and each installment will be deemed to be a separate sale. Despite anything to the contrary in this Agreement, before Beckman Coulter must deliver the Equipment, you must prepare your site for the Equipment according to Beckman Coulter's recommendations. After the Equipment is delivered and your site is properly prepared, Beckman Coulter will perform all tasks necessary to install the Equipment and ensure it operates in accordance with the operator manual or labeling in effect at the time of your order.

12. Product Return; Restocking Fee. Product returns must be made in accordance with Beckman Coulter's returned materials policy and may be subject to a restocking charge in accordance with that policy.

13. Limited Warranty and Disclaimer. Subject to the below exceptions and conditions, Beckman Coulter warrants to you that (a) instruments will perform in all material respects in accordance with the applicable operator manual in effect at the time of instrument installation, for twelve months from the date of delivery, (b) reagents provided under this Agreement will conform in all material respects to the applicable labeling for the lesser of the expiration date on the label or twelve months from the delivery date if no date is specified on the label, and (c) the Services will be performed in a workmanlike manner. If Beckman Coulter's investigation discloses that a Product defect developed during normal use in accordance with the applicable operator manual or other product labeling within the warranty period, Beckman Coulter may, without

charge to you for parts, labor, and travel, either repair during Beckman Coulter's normal business hours or replace the defective Product. Your sole and exclusive remedy against Beckman Coulter for missing or defective Products will be repair or replacement by Beckman Coulter of the defective Products. The original warranty period shall be in effect on any repaired or replaced instrument or parts. If Beckman Coulter replaces any part under this warranty or as a result of the Services, Beckman Coulter will own the replaced part. Your sole and exclusive warranty for Services not performed in a workmanlike manner will be the re-service of the applicable instrument. If a third party manufactured product is supplied to you pursuant to this Agreement, Beckman Coulter assigns to you any rights that may exist under the warranty provided by the manufacturer. Beckman Coulter does not, however, warrant the performance of the third party manufactured product or provide any remedy for failure of the third party product to perform. Your exclusive remedy is any remedy that may exist under the warranty rights passed through to you under this section. THE WARRANTIES IN THIS SECTION ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND STATE YOUR EXCLUSIVE REMEDIES RELATING TO PERFORMANCE OF THE PRODUCTS OR SERVICE. BECKMAN COULTER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE PRODUCTS, SERVICE, AND TESTS PERFORMED BY THE PRODUCTS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. You will be responsible for, and Beckman Coulter's service and warranty obligations under this Agreement, will not apply to, repairs, replacements or claims resulting from (a) your failure to properly perform the service and maintenance required in the operator's manual for the Equipment, (b) repairs or relocation of the Equipment by persons other than those authorized by Beckman Coulter, (c) replacements with non-genuine Beckman Coulter parts, (d) your negligence or negligent operation of any Product or the negligence or malpractice of another party, (e) alterations, modifications to, or misuse of, any Product, (f) using unauthorized third party products with the Equipment, (g) environmental conditions outside the recommended range of the Product, such as electrical supply, temperature, or humidity, or (h) other factors beyond Beckman Coulter's control, such as fire, explosion or flood.

14. Limitation of Liability. Beckman Coulter's total liability and your exclusive remedy under or related to this Agreement will be limited to direct money damages, not to exceed \$1,000,000. Beckman Coulter will have no liability to you, your customers, or any other third parties under or in any way related to this Agreement for any special, indirect, incidental, consequential, exemplary or penal loss or damage of any nature whatsoever, even if Beckman Coulter have been advised of the possibility of such damages and whether or not such damages were foreseeable.

15. Default. If you do not fulfill any material obligation in this or other agreement you have with Beckman Coulter and do not correct your failure within 30 days of notice to you, or if any credit or other information you submit to Beckman Coulter is untrue in any material respect, then Beckman Coulter may, without notice or demand, terminate this Agreement. Beckman Coulter does not waive any rights by accepting overdue payments, and a waiver of a breach is not a waiver of any future breach. If you fail to make any payment on time under this or any other agreement, Beckman Coulter has no obligation to deliver any Product to you. You expressly waive this nonperformance as a defense in any action against you for breach.

16. Confidentiality. The information in this Agreement, including Attachment A is confidential and proprietary. Any use or disclosure of this information for any purpose other than that for which it has been provided may cause substantial competitive harm to Beckman Coulter and is prohibited.

17. Indemnification. Beckman Coulter will defend and indemnify you as provided in the National Agreement. You agree to defend and indemnify Beckman Coulter and its respective affiliates, directors, officers, employees, agents, customers, and insurers from and against any and all claims, demands, actions, losses, expenses, damages, liabilities, costs (including, without limitation, interest, penalties and reasonable experts' and attorneys' fees) and judgments to the extent arising out of: (i) the malpractice or negligence of any professional intermediary within your control; (ii) your (including any of your contractors, invitees, or agents) misconduct, negligence, or negligent operation or use of any of the Products other than as described in the applicable operator manuals or labeling; or (iii) the modification, alteration, or use of the Products in conjunction with a product not expressly authorized by Beckman Coulter to be used with the Products. As a condition of Beckman Coulter's obligation to indemnify you, you must provide Beckman Coulter with prompt written notice of any claim giving rise to the obligation and fully cooperate with Beckman Coulter in the defense of the claim.

18. Regulatory Requirements. You acknowledge your obligation to inform anyone that uses the Products of Beckman Coulter's labeling literature and related notices that Beckman Coulter provides to you. If you file any cost reports or claims

for reimbursement with federal or state health care programs, you will fully and accurately disclose and claim the amount of any discount included under this Agreement in the fiscal year in which the discount is earned or the following year, according to any applicable federal and state statutes and regulations. The parties will comply with all applicable laws and regulations, including all laws and regulations relating to the protection of patient health information. You acknowledge that the Equipment is not generally operated in patient care areas and agree that you will not subject Beckman Coulter's personnel to access requirements greater than those specifically recommended by the Joint Commission for health care representatives without regular access to patient care areas.

19. Force Majeure. Beckman Coulter will not be liable for any delay or failure to perform under this Agreement due to causes beyond Beckman Coulter's reasonable control, such as acts of God, war or other hostility, acts of terrorism, civil disorder, the elements, fire, power failure, equipment failure, industrial or labor dispute, embargo, acts of any government or inability to obtain necessary supplies and the like. Despite anything to the contrary in this Agreement, Beckman Coulter may apportion Product subject to a shortage in any manner Beckman Coulter considers equitable.

20. Entire Agreement; Purchase Orders. This Agreement constitutes the entire understanding between you and Beckman Coulter with respect to its subject matter and supersedes any and all prior or contemporaneous understandings and agreements, written or oral, relating to the subject matter. Any terms or conditions on your purchase order, order acknowledgement or any other document relating to the Products is null and void and without legal effect. Such documents will be used only to confirm quantities and agreed delivery schedules and the like and will not supplement, modify or amend the substantive terms and conditions of this Agreement.

21. Governing Law; Dispute Resolution. This Agreement will be governed by and construed in accordance with the laws of the state in which you are primarily located, excluding its choice of the law provisions. Within 30 days of a request, a vice president (or equivalent officer) of both you and Beckman Coulter will personally attempt to resolve a dispute with each other. If the dispute is not resolved within 30 days after the officers first meet, the dispute may be further mediated if you and Beckman Coulter agree or submitted to a court for resolution.

22. Export Controls. You will not export or transfer Product for re-export in violation of any United States laws or regulations, or to any denied or prohibited person, entity, or embargoed country in violation of such laws or regulations. The pricing and warranties set forth in this Agreement are valid only for Products delivered to you installed by you and used by you within the United States.

23. Miscellaneous. This Agreement may be changed only in a written document signed by each party's duly authorized representative. A party's failure to exercise any rights under this Agreement will not be deemed a waiver or forfeiture of such rights. Headings in this Agreement are for convenience only and will not constitute part of this Agreement. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable for any reason, (a) the validity and enforceability of the remaining provisions will not be affected or impaired in any way and (b) the parties will promptly renegotiate the effected provision to determine valid and enforceable language that most closely resembles the language rejected by the court and intended by the parties. You may not assign or transfer any rights or obligations under this Agreement without Beckman Coulter's prior written consent, which may not be unreasonably withheld. This Agreement exists for the benefit of you and Beckman Coulter (or each party's respective successors and assigns as permitted under this Agreement), and no other person or entity may bring any action to enforce any provision of this Agreement. This Agreement will not be construed as if it had been prepared by either party, but rather as if it were jointly prepared. This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement.