

**ROCHE DIAGNOSTICS**  
**Alliance Usage Agreement**



Diagnostics

<b>County of San Mateo</b> <b>225 W 37<sup>th</sup> Ave.</b> <b>San Mateo, CA 94403</b>	<b>Roche Diagnostics Corporation</b> <b>9115 Hague Road</b> <b>Indianapolis, Indiana 46250-0457</b> <b>317-521-2000</b>
---	--

This Alliance Usage Agreement (the "Agreement") between San Mateo Public Health ("Customer") and Roche Diagnostics Corporation ("RD") contains the terms and conditions under which Customer agrees to use or purchase, as applicable, the Equipment, Reagents and/or Service detailed in each Schedule to this Agreement (each, a "Schedule").

**A. GENERAL TERMS AND CONDITIONS**

**A1. DELIVERY, INSTALLATION, ACCEPTANCE AND COMMENCEMENT:** This Agreement becomes effective and the terms and conditions contained herein will apply to every transaction Customer enters into with RD after Customer has signed it and RD has accepted it. Thereafter, each Schedule hereto will become effective after Customer has signed and RD has accepted that particular Schedule. The terms and conditions in this Agreement will apply to each Schedule. If Equipment is not included in the Schedule, then the Commencement Date will be the date of RD's first shipment of reagent/supplies. If Equipment is included in the Schedule, after Customer has signed and RD has accepted the applicable Schedule, RD will deliver and install the Equipment specified on the face of that Schedule to Customer's designated facility. **WHEN RD INSTALLS EACH PIECE OF EQUIPMENT, CUSTOMER AGREES TO INSPECT IT TO DETERMINE IF IT IS IN GOOD WORKING ORDER. A PIECE OF EQUIPMENT WILL BE DEEMED IRREVOCABLY ACCEPTED BY CUSTOMER IF CUSTOMER HAS NOT GIVEN RD WRITTEN NOTICE WITHIN 5 CALENDAR DAYS AFTER INSTALLATION THAT SUCH PIECE OF EQUIPMENT IS NOT IN GOOD WORKING ORDER.** Upon such notice, RD will place the piece of equipment in good working order. **CUSTOMER'S OBLIGATION TO MAKE PAYMENTS WITH RESPECT TO EACH PIECE OF EQUIPMENT COVERED BY THIS AGREEMENT OR A SCHEDULE HERETO SHALL COMMENCE ON THE DAY THE PIECE OF EQUIPMENT IN QUESTION FIRST BEGINS REPORTING PATIENT BILLABLE RESULTS, AND CUSTOMER WILL NOTIFY RD IMMEDIATELY WHEN THIS OCCURS. THIS DATE WILL BE KNOWN AS THE "COMMENCEMENT DATE". CUSTOMER AGREES THAT SUCH COMMENCEMENT AND NOTIFICATION SHALL NOT BE UNREASONABLY DELAYED. FOR GENERAL PURPOSE LABORATORY INSTRUMENTS THAT DON'T REPORT PATIENT BILLABLE RESULTS (E.G., MAGNAPURE, LIGHT CYCLER, ETC), COMMENCEMENT WILL OCCUR ON COMPLETION OF ALL ROCHE INSTALLATION ACTIVITIES.** If the Equipment will not be used for patient diagnosis the expected Commencement Date will occur simultaneously on the acceptance date. Commencement of reporting patient billable results is anticipated to begin within 60 days of delivery of each piece of equipment to Customer's designated facility. RD and Customer agree to work together to achieve reporting of patient billable results within the 60 day period, or as soon thereafter as practical under the circumstances. If a Commencement Date cannot be achieved during this 60-day period, RD reserves the right, to be exercised in RD's sole discretion, upon reasonable notice to reclaim the equipment and invoice Customer for delivery, installation and de-installation costs incurred. These deliveries, installation and de-installation costs shall only be charged to Customer if Customer was responsible for failure to achieve Commencement. RD will record the Commencement Date on the face of the applicable Schedule and return a copy to Customer. If multiple pieces of equipment are contemplated by any particular Schedule, Customer's acceptance and obligations to make payments will be determined on a piece-by-piece basis.

Nothing contained herein should be construed to mean that acceptance or the obligation to make payments will be contingent on installation or the reporting of patient billable results by all equipment described on the particular Schedule in question. In addition, RD reserves the right to revise or extend the term of each Schedule, when a Schedule contains more than one piece of Equipment, in order to provide a coterminous end date for all pieces of Equipment contained on that Schedule, corresponding with the Commencement Date for the last piece of Equipment on that Schedule to achieve commencement.

**A2. SHIPMENTS:** RD will ship the Reagents, Equipment and/or other products under each Schedule to Customer's designated facility. RD will select the carrier and be responsible for loss or damage to the Reagents, Equipment and/or other products while in transit and until delivery is made to Customer's designated facility. Customer assumes the risk of loss and damage to the Equipment immediately upon delivery to Customer's facility. Customer will pay all freight, shipping and special delivery charges. These charges will be included on RD's invoices to Customer.

**A3. PAYMENT TERMS:** All payments are due 30 days from RD invoice date.

**A4. TAXES:** Customer will pay when due, either directly or by reimbursing RD, all taxes (including, without limitation, all personal property taxes), including interest or penalties, relating to this Agreement and each Schedule. This responsibility shall survive the termination of this Agreement. RD will not bill Customer for payment of any sales or use tax for which the Customer is exempt, as long as Customer maintains a tax exempt status.

**A5. LIMITED WARRANTY; COMPLIANCE WITH SPECIFICATIONS:** RD warrants that all Reagents and replacement parts for Equipment furnished under this Agreement and any applicable Schedule will be free from defects in materials and workmanship and will meet all manufacturer's written specifications until the expiration date printed on the label (for Reagents) or installation date (for replacement parts). RD warrants the Equipment furnished under this Agreement and any applicable Schedule will be free from defects in materials and workmanship (except for consumable items and lamps) and will meet all manufacturer's written specifications for a period of one year (90 days in the case of parts in direct contact with reagents). RD reserves the right to ship certified used Equipment in instances where the Schedule indicates an End-of-Term Purchase Option of Fair Market Value or None. At RD's option, RD will either replace or repair free of charge all parts which prove to be defective and are subject to such warranty. RD will ship replacement parts at no cost to Customer. THE LIMITED WARRANTY SET FORTH IN THIS SECTION SHALL BE IN LIEU OF, AND RD EXPRESSLY DISCLAIMS, ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL RD BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. Customer agrees that RD makes no representation and provides no warranty for non-RD

products. Customer holds RD harmless from any responsibility or claims that arise from the use of non-RD product. Any other warranty which may be provided with respect to any particular Equipment and/or Reagents is detailed in the applicable Schedule. Any warranty provided with respect to any Equipment will begin on 1) the shipment date if Customer installed; 2) on the Commencement Date if RD installed.

**A6. DEFAULT:** (1) RD is in "Default" under this Agreement if: (a) RD does not perform any of RD's obligations under this Agreement and this failure continues for 15 calendar days after Customer has notified RD in writing of RD's non-performance; (b) RD becomes insolvent, RD dissolves or is dissolved, or RD assigns its assets for the benefit of RD's creditors or enters (voluntarily or involuntarily) into any bankruptcy or reorganization proceeding. (2) Customer is in "Default" under this Agreement if: (a) Customer fails to provide payment of any sum to be paid hereunder within 15 calendar days of its due date; (b) Customer fails to comply with its Reagent Commitment; (c) Customer does not perform any of its other obligations under this Agreement or in any other agreement with RD and this failure continues for 15 calendar days after RD has notified Customer in writing of its non-performance; (d) Customer becomes insolvent, Customer dissolves or is dissolved, or Customer assigns its assets for the benefit of its creditors, or enters (voluntarily or involuntarily) into any bankruptcy or reorganization proceeding; or (e) Customer offers products purchased or received under this Agreement for resale.

**A7. REMEDIES:** (1) If RD is in Default, Customer may cancel or terminate the particular Schedule under which RD is in Default, without payment of any "loss of RD bargain" charges specified in the applicable Schedule or elsewhere in this Agreement which would have otherwise applied in the event of an early termination by Customer. In the event Customer terminates because RD is in Default, (a) Customer will remain obligated to pay all sums owed to RD prior to the date of Customer's termination; and (b) Customer will have an opportunity to purchase the Equipment at a price calculated from the Equipment's amortization schedule, a copy of which will be provided to Customer upon its termination. To the extent Customer did not elect to purchase the Equipment, RD will be entitled to exercise its rights specified in Section A7 (2)(d) of this Agreement. (2) If Customer is in Default, RD may do one or more of the following: (a) cancel or terminate this Agreement or any or all other agreements or Schedules that RD has entered into with Customer; (b) require Customer to immediately pay RD (i) any amounts owing under this Agreement at the time of Default, (ii) late charges of 1.5% per month, or the maximum permitted by law, whichever is less, on all payments not received by RD on or before the due date, (iii) as compensation for loss of RD bargain and not as a penalty, a sum as set forth in the applicable Schedule or elsewhere in this Agreement, and (c) require Customer to deliver the Equipment and Reagents to RD as set forth in Section B6 of this Agreement; (d) cause RD or RD's agent to peacefully repossess the Equipment and Reagents without court order and Customer will not make any claims against RD for damages or trespass or any other reason; (e) cease providing Service under this Agreement or any other agreements RD has entered into with Customer; (f) exercise any other right or remedy available at law or in equity. Notwithstanding the foregoing, Sections A7 (2)(c) and A7 (2)(d) shall not apply to any Equipment to which Customer holds title and in which RD has no security interest. If RD takes possession of the Equipment, RD agrees to sell or otherwise dispose of it with or without notice, at a public or private sale, and to apply the net proceeds (after RD has deducted all costs related to the sale or disposition of the Equipment) to the amounts that Customer owes RD. Customer agrees that if notice of sale is required by law to be given, 10 days notice shall constitute reasonable notice. Customer will remain responsible for any amounts that are due after RD has applied such net proceeds. **TO THE EXTENT EITHER PARTY IS IN DEFAULT, THE DEFAULTING PARTY SHALL PAY ALL OF THE COSTS OF THE NON-DEFAULTING PARTY OF ENFORCING ITS RIGHTS HEREUNDER, INCLUDING REASONABLE ATTORNEYS' FEES.**

**A8. ASSIGNMENT:** Customer may not assign, sell, transfer or sublease the Equipment or its interest in this Agreement without our prior written consent which shall not be unreasonably withheld. RD may, with written notice to Customer, sell, assign or transfer this Agreement and its rights in the Equipment. The new owner will have the same rights and benefits that RD has now under this Agreement but not its obligations, which RD shall retain. The rights of the new owner will not be subject to any claims, defenses or set-off that Customer may have against RD. The foregoing restrictions on assignment of Customer's rights in any Equipment will not apply to any Equipment owned by Customer.

**A9. INDEMNITY:** RD agrees to indemnify Customer from all liabilities arising from RD's negligence or willful misconduct or RD's failure to perform its duties or obligations as set forth in this Agreement, except to the extent caused by Customer's negligence or willful misconduct. Customer agrees to indemnify RD from all liabilities arising from its misuse of the Equipment and Reagents provided under this Agreement. The obligation of either party to indemnify the other pursuant to this Agreement shall be contingent upon timely notification by the indemnitee to the indemnitor of any claims, suit or service of process; control by the indemnitor over the conduct and disposition of any claim, demand or suit; and cooperation by the indemnitee in the defense of the claim, demand or suit.

**A10. CREDIT INFORMATION:** Customer agrees to provide RD with complete and accurate financial statements and other financial information that RD reasonably requests from time to time and Customer understands and acknowledges RD to obtain credit bureau reports and make credit inquiries that RD determines are necessary.

**A11. TRAINING:** Any training to be provided by RD (including the costs and expenses thereof) is detailed on the applicable Schedule.

**A12. DISCLOSURE OF DISCOUNTS:** Any discounted products or services provided by RD to Customer under this Agreement are provided with the express understanding that RD or its distributor (to the extent the products or services are provided by RD's authorized distributor) will provide Customer with invoices that fully and accurately disclose the discounted price of all such products and services. Customer, as an institution required to file Medicare/Medicaid cost reports with the Federal and/or appropriate state government, has an obligation under Federal law to fully and accurately report any discounts in its cost reports (Public Law 100-93, the "Medicare and Medicaid Patient and Program Protection Act of 1987", 42 CFR part 1001 as amended, July 29, 1991).

**A13. GOVERNING LAW, VENUE, RIGHT TO JURY TRIAL:** Customer agrees that the laws of the State of California will govern this Agreement and Customer consents to the jurisdiction of and venue in any court located within the State of California. Both parties expressly waive their rights to trial by jury.

**A14. SEVERABILITY:** Should any provision of this Agreement be held invalid, ineffective or unenforceable, the remaining terms will remain in full force and effect.

**A15. FORCE MAJEURE:** Either party's obligations under this Agreement shall be suspended in the event that party is hindered or prevented from complying with its obligations because of labor disturbances, wars, terrorist acts, fires, storms, accidents, interferences or any other similar cause beyond its reasonable control.

**A16. ENTIRE AGREEMENT:** Customer agrees that the terms and conditions in this Agreement and each Schedule (together with any attachments or exhibits thereto), if any, make up the entire Agreement between Customer and RD with respect to the subject matter hereof. In the event of a conflict between the terms of this Agreement and/or any Schedule (or any attachments or exhibits thereto) the terms of the applicable Schedule shall control. If Customer delivers a purchase order with this Agreement or any Schedule hereto, it is for reference purposes only and the terms of this Alliance Agreement and any applicable Schedule will be the only terms and conditions that apply.

**A17. NOTICES:** All notices shall be given in writing by the party sending the notice and shall be effective when deposited in

the U.S. Mail, certified with return receipt requested, addressed to the party receiving the notice at its address shown on the face of this Agreement. Notices to RD should be marked Attn: Law Department. All of RD's rights shall survive the term of this Agreement and each Schedule.

**A18. MISCELLANEOUS:** The titles and headings used in this Agreement are for convenience only and shall not be used to interpret the terms and conditions of this Agreement. This Agreement is not binding on RD until signed by an authorized representative of RD at RD's Indianapolis office. No waiver of or modification to any term of this Agreement is valid unless it is in writing and signed by RD and Customer. Customer agrees that RD is authorized to supply missing information or correct obvious errors in this Agreement and each Schedule. If RD delays or fails to enforce any of its rights under this Agreement or any Schedule, RD will be able to enforce its rights at a later time. The terms of this Agreement, including pricing, are- the confidential information of RD and shall not be disclosed by Customer to any third party, except as may be required by law or government regulation.

**A19. NON-APPROPRIATION:** In the event no funds or insufficient funds are appropriated and budgeted for this service acquisition and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the Payments for this service are due under this Contract, then Customer shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Contractor and any Assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to the Customer of any kind, except as to the (i) portions of the Payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) Customer's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. Notwithstanding the foregoing, Customer agrees (a) that if this Contract is terminated in accordance with the preceding paragraph, Customer shall not render services from

another Contractor which performs the same function as, or functions taking the place of, those performed by the Contractor, and shall not permit such functions to be performed by its own employees or by any agency or entity affiliated with or hired by Customer for the balance of the fiscal period in which such termination occurs or the next succeeding fiscal period thereafter, and (b) that it shall not, during the Contract Term, give priority in the application of funds to any other similar service.

**A20. NON-DISCRIMINATION:** No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. (1) Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years.

**A21. EQUAL BENEFITS:** With respect to the provision of employee benefits, Contractor has signed the County of San Mateo Equal Benefits Compliance Declaration Form and will comply with the County's ordinance regarding equal benefits.

**A22. JURY DUTY:** RD shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that RD employees shall receive, on an annual basis, no less than five (5) days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with RD or that RD deduct from the employees regular pay the fees received for jury service.

**A23. MASTER AGREEMENT TERM:** The term of this Master Agreement shall be 36 months.

## B. ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO EQUIPMENT

**B1. LOSS and DAMAGE:** Customer is responsible for any loss, theft, destruction of, or damage to the Equipment (collectively "Loss") for any cause at all, whether or not insured, until it is delivered to RD as set forth in Section B6 of this Agreement.

**B2. EQUIPMENT LOCATION & SERVICE:** Customer will not alter, modify or move the Equipment from the location listed on the face of the respective Schedule without RD's prior written consent. Customer must enter into a service program as required by the applicable Schedule.

**B3. TITLE AND RECORDING:** RD is the owner of and will hold title to the Equipment. Customer consents to RD filing a UCC Financing Statement on the Equipment. If this transaction is deemed to be a contract intended for security, Customer grants RD a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). Customer will keep the Equipment free of all other liens and encumbrances.

**B4. LOSS OF BARGAIN CHARGES:** If Customer is in Default (as defined in Section A6 of this Agreement) under any Schedule relating to Equipment, RD's compensation for the loss of RD bargain, which shall be paid by Customer pursuant to Section A7 (2)(b) and shall be in addition to any other remedies specified in this Agreement or the applicable Schedule, shall be as follows: (i) any amounts owing under the Schedule at the time of Default, and (ii) for Equipment with an end-of-term purchase option, all unpaid Equipment Payments for the remaining term of

the applicable Schedule, discounted to present value at a rate of 5% per year, or (iii) for Equipment without an end-of-term purchase option, 15% of the sum of the remaining Equipment Payments for the term of the applicable Schedule. Upon Customer request, for Equipment with or without an end-of-term purchase option, Customer will have an opportunity to purchase the Equipment at a price calculated from the Equipment's amortization schedule, a copy of which will be provided to Customer by RD.

**B5. END-OF-TERM OPTIONS:** Customer may, at the end of the term of the Schedule or at any time thereafter, with 90 days prior written notice by Customer, purchase the Equipment, in accordance with the purchase option stated on the face of the Schedule. If Customer elects not to exercise any such option, with 90 days prior written notice by either party, Customer will return the Equipment to RD.

**B6. RETURN OF EQUIPMENT:** If, at any time, Customer is required by the terms of this Agreement to return Equipment to RD, Customer will return such Equipment in as good condition as when Customer received it, except for ordinary wear and tear, to a location designated by RD which will be RD's Indianapolis, Indiana location. If Customer meets their commitment in full, RD will pay all expenses of de-installing, crating and shipping and Customer will insure the Equipment for its full replacement value during shipment.

## C. ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO REAGENTS

**C1. REAGENTS DEFINED:** For purposes of this Agreement and all Schedules hereto, "Reagents" shall include all items listed as "Reagents" on all Schedules to this Agreement.

**C2. RETURNS AND CREDITS:** All returns of Reagents and Supplies (including returns for credit) must be made in accordance with RD returned goods policy currently in place. A copy of this policy will be provided to Customer at its request. RD

reserves the right to change this policy from time to time with notice to Customer. No returns will be accepted unless they are made in accordance with RD's current returned goods policy.

**C3. REAGENT and SUPPLY PURCHASES:** Customer agrees to purchase 100% of the contracted levels of Reagents, in terms of number of kits/tests, as applicable, as well as total dollar amount (the "Commitment") during the term of each Schedule, as set forth and attached to the Schedule in the form of a Reagent and Supply Exhibit. After the first six months, Customer agrees that if it fails to purchase 1/2 of the annual total of its Commitment during the second six months, or if Customer fails to purchase the annual total of its Commitment during any subsequent 12-month period throughout the term of the applicable Schedule or any renewal thereof, RD may declare Customer in default and/or adjust the pricing of each Reagent/Supply to reflect the volumes actually being purchased. If Customer's volumes significantly increase, RD commits to review Customer's Reagent/Supplies pricing, at Customer's request, for possible adjustment on future purchases.

**C4. TITLE TO REAGENTS / SUPPLIES:** Title to Reagents / Supplies will pass upon delivery by RD to the Customer's delivery point.

**C5. PRICING ADJUSTMENTS:** After the first 12 months from the commencement of each Schedule, RD may adjust each contracted Reagent/Supply price once annually upon 30 days advance written notice.

**C6. TERMINATION OF SCHEDULES:** Unless otherwise specified in a Schedule, Customer may not terminate or cancel any Schedule to purchase Reagents and Supplies, or any Schedule that is associated with Equipment. In the event some

#### D. TERMS APPLICABLE TO PURCHASES MADE VIA AUTHORIZED DISTRIBUTORS

**D1. TERMS OF PURCHASE:** With RD's authorization, Customer may select one of RD's authorized distributors from whom to make purchases required by this Agreement or any Schedule thereto, provided that Customer and Distributor agree that (a) Distributor will be the billing agent for the applicable Schedule, (b) Distributor will assume responsibility and is liable for all corresponding payments to RD for each shipment, (c) RD will not accept any return of products under this Agreement or any Schedule except as specified in RD's returned goods policy then in place, (d) Distributor must execute and remain in compliance with a form of Distributor pricing agreement

#### E. TERMS AND CONDITIONS APPLICABLE TO SERVICE

**E1. LEVEL AND SCOPE OF SERVICE; SERVICE FEES:** If Customer is required or otherwise elects to subscribe to a Service Program with RD pursuant to which RD will provide service ("Service") to Equipment owned or operated by Customer, the level of Service, the fees payable to RD for the provision of such Service ("Service Fees"), and a detailed scope of Service to be provided for the stated Service Fees (i.e. number of preventative maintenance visits, hours Service and/or emergency maintenance will be provided, etc.) shall be set forth on a separate Schedule to this Agreement. In all instances, unless otherwise noted, "Service" shall mean labor time, travel time and Service parts.

**E2. LIMITATIONS ON SERVICE AVAILABILITY:** Service shall only be available on Equipment which is or was (1) new when installed by RD and subject to a Service Schedule thereafter, (2) subject to a maintenance or service agreement with RD at all times prior to the execution of a Service Schedule with respect thereto, or (3) subject to reconditioning by RD and accepted by RD in writing as a candidate for Service under the terms of the applicable Schedule.

**E3. CUSTOMER OBLIGATIONS:** Customer agrees to use the Equipment in strict accordance with RD operating instructions, to permit servicing and repair work by RD personnel or RD-approved third party service agents only, and to obtain RD prior written consent prior to connecting the Equipment to any other equipment or using any equipment or accessories not provided by RD with the Equipment. Customer agrees to use the Equipment in an appropriate location and with electrical

but not all of the Equipment is deleted from any Schedule, Customer and RD agree to renegotiate the price and quantity of Reagents that Customer is obligated to purchase under any associated Schedule.

**C7. LOSS OF BARGAIN CHARGES:** If Customer is in Default (as defined in Section A6 of this Agreement) under any Schedule relating to Reagents/Supplies, RD's compensation for the loss of RD bargain, which shall be paid by Customer pursuant to Section A7 (2)(b) and shall be in addition to any other remedies specified in this Agreement or the applicable Schedule, shall be as follows: (i) any amounts owing under the Schedule at the time of Default, and (ii) an amount equal to ¼ of Customer's annual commitment stated in the applicable Schedule.

**C8. END OF TERM OPTIONS** Customer may, at the end of the initial term of any Schedule, with 90 days prior written notice by Customer to RD, cancel the Schedule. Upon the stated expiration date of any Schedule, without the notice described in this section, that Schedule will automatically renew month-to-month, for full billing months. All terms and conditions set forth herein will apply during any automatic renewal period, provided, however, that upon expiration of the initial term and the subsequent automatic conversion to month-to-month renewals, RD shall have the ongoing right, in its discretion and without notice to the Customer, to increase the pricing applicable to Reagents.

mandated by RD, (e) participation of Distributor is subject to RD credit approval. RD may require Customer to change Distributors if any Distributor becomes unable to meet its obligations under any agreement between Distributor and RD. Customer must inform RD in writing in advance of electing to use a Distributor, and Customer may change Distributors only by giving RD 30 days advance written notice of such change. Customer hereby agrees to indemnify RD from and against any loss, claim or damage asserted against RD (including legal fees) by Customer's Distributor by reason of Customer changing Distributors.

connections which correspond to the electrical supply specifications of the manufacturer. Customer will protect the Equipment from all adverse elements, such as dirt, dust and liquids of any kind. In the event of necessary or scheduled service, Customer will allow RD personnel access to operating locations of any Equipment to be serviced and provide adequate space around the Equipment. In turn, RD will respect all internal operating procedures of which Customer has advised RD, as well as all of Customer's general security instructions.

**E4. EXCLUSIONS FROM COVERAGE:** Customer payments of Service Fees under this Agreement and any Service Schedule do not cover repairs made necessary by (i) operator errors, lack of operator maintenance, abnormal or unapproved uses, acts of third parties, faulty electrical connections, fluctuations or failures in air conditioning, heating or cooling systems and electrical power failures, (ii) force majeure, including natural disasters such as fire, flood, earthquakes, tornadoes, wind damage and lightning strikes, riots, sabotage, demonstrations, acts of terrorism, war, civil war, acts of public authorities and all other causes beyond RD's reasonable control, or (iii) defects or malfunctions of any external computer hardware attached to the Equipment. In the event repairs such as those described in the foregoing sentence are necessary, RD will give Customer a cost estimate describing the work to be performed, the number and cost of supplies and parts to be provided, the expected time to completion, the hourly rate and other details and conditions of the repairs, and Customer will provide RD with a purchase order for such repairs. Any terms and conditions of Customer's purchase order that conflict with the terms of this

Agreement or the applicable Service Schedule are hereby rejected and the terms of this Agreement or applicable Service Schedule shall control. Repairs described in this Section will be billed separately.

**E5. EQUIPMENT MODIFICATION:** The Equipment will perform as warranted during any applicable initial warranty period. However, RD may thereafter be required to modify the Equipment in order to improve its use and reliability. All such modifications shall be the subject of a detailed cost estimate by RD and shall be assented to by Customer by submitting a purchase order to RD. Any terms and conditions of Customer's purchase order that conflict with the terms of this Agreement or the applicable Service Schedule are hereby rejected and the terms of this Agreement or the applicable Service Schedule shall control. All modification work shall be billed separately except for modifications required to improve use or reliability which occur during any applicable warranty period, which shall be free. Modified Equipment shall be subject to this Agreement and any applicable Service Schedule in all respects. Modifications shall not extend the normal warranty period.

**E6. REMOTE ACCESS SERVICE:** To optimize the functionality, performance and use of Equipment, Customer agrees that RD may from time to time desire to access the Equipment to provide Customer with remote access service via connectivity solution (e.g. modem) and a software teleservice tool. Remote access service ("RA Service") may include any of the following: (i) Screen sharing (remote viewing of Customer screens) to view software user interface; (ii) Remote operation of equipment in diagnostic mode; (iii) Performance of component and/or mechanism checks; (iv) Remote configuration of equipment; (v) Data uploads/downloads, data capture, database exporting and transmission of log files; (vi) Transmittal of application software updates; and (vii) any other Service which may be performed under this Agreement. RA Service will be provided at RD's discretion on a case-specific basis for troubleshooting and repair and/or a long-term basis to perform data tracking, evaluation and review of equipment use to facilitate optimization or enhanced functionality. RA Service will be provided at RD's option and will only be provided with respect to Equipment manufactured, sold, distributed and/or serviced by RD. Nothing contained herein shall obligate RD to provide RA Service with respect to any diagnostics equipment. RD will have no obligation to alert or notify Customer of any issues or problems arising in connection with any Equipment which are or

would have been discernable from a study or review of any data obtained from the Equipment. Any repairs to any Equipment via RA Service will be subject to the service warranty set forth in Section E7 of this Agreement. IN ADDITION, IN NO EVENT SHALL RD BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN ANY WAY RELATING TO THE PERFORMANCE OF THE RA SERVICE, INCLUDING LOSS OF PATIENT OR LABORATORY DATA OR DAMAGE TO ANY DATA INTERFACE BETWEEN RD EQUIPMENT AND OTHER LABORATORY EQUIPMENT, COMPUTER SOFTWARE OR COMPUTER HARDWARE. THIS EXCLUSION APPLIES REGARDLESS OF WHETHER SUCH DAMAGES ARE SOUGHT FOR BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR STRICT LIABILITY IN TORT OR FOR ANY OTHER REASON.

**E7. LIMITED SERVICE WARRANTY:** RD warrants that the Service provided under this Agreement and any attachments or exhibits to this Agreement or to Schedules to this Agreement will be free from defects in workmanship for a period of 30 calendar days from the date of service except for replacement parts, which shall be covered by the warranty set forth in Section A5. THE LIMITED WARRANTY SET FORTH IN THIS SECTION SHALL BE IN LIEU OF, AND RD HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES PROVIDED, EXCEPT THE LIMITED WARRANTY SET FORTH ABOVE. RD IS NOT LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF THE USE OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES AND DOWN-TIME COSTS, RESULTING FROM OR ARISING IN CONNECTION WITH THE PERFORMANCE, DELAY IN PERFORMANCE OR NON-PERFORMANCE OF ANY TERMS OR CONDITIONS OF THIS AGREEMENT OR FROM THE USE OR MISUSE OF ANY EQUIPMENT OR ANY MATERIAL OR WORKMANSHIP DELIVERED HEREUNDER, EVEN IF WE HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. AS YOUR EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY WE WILL REPERFORM ANY SERVICE WHICH IS DEFECTIVE.

**F. THE UNDERSIGNED, BEING DULY AUTHORIZED SIGNATORIES, AGREE TO ALL TERMS AND CONDITIONS SET FORTH HEREIN AND THEY HEREBY EXECUTE THIS AGREEMENT. ONLY A CORPORATE REPRESENTATIVE IN THE INDIANAPOLIS OFFICE IS AUTHORIZED TO SIGN THIS AGREEMENT ON BEHALF OF ROCHE DIAGNOSTICS CORPORATION.**

<p><b>CUSTOMER</b></p> <p>_____</p> <p><b>(Customer Name)</b></p> <p><b>Signature:</b> _____</p> <p><b>By (Printed):</b> _____</p> <p><b>Title:</b> _____</p> <p><b>Date:</b> _____</p>	<p><b>ROCHE DIAGNOSTICS CORPORATION</b></p> <p><b>Signature:</b> _____</p> <p><b>By (Printed):</b> _____</p> <p><b>Title:</b> _____</p> <p><b>Date:</b> _____</p>
---	---