

# SERVICE TERMS AND CONDITIONS

## 1. Agreement

Beckman Coulter NZ ("Beckman Coulter") agrees to supply the Customer the type of services specified in the Service Contract as set out in clause 11 of this service terms and conditions ("Services"), in respect of the equipment specified in the Service Contract including any additional equipment that may constitute an integral part thereof ("the Equipment"). The Service Contract comprises of this service terms and conditions ("this Agreement"). In the event of inconsistencies, the Service Contract shall prevail.

## 2. Acceptance by Beckman Coulter

This Agreement will not be binding on Beckman Coulter until accepted by Beckman Coulter authorized personnel ("Acceptance Date").

## 3. Term of Agreement

- (a) This Agreement will be effective from the Start Date specified in the Service Contract.
- (b) Subject to the provisions of clause 14, this Agreement will remain in force for the Period specified in the Service Contract ("Initial Period") and henceforth from year to year unless cancelled in writing by either party giving thirty (30) days' prior notice to the other party.
- (c) Any service performed prior to the Acceptance Date of this Agreement or performed subsequent to the expiration or termination of this Agreement will be billed at the then current time and materials rate.

## 4. Service Charges and Payment

- (a) As consideration for Beckman Coulter providing the Services, the Customer agrees to pay an annual service charge as specified in the Service Contract, in advance, within thirty (30) days of receipt of an invoice from Beckman Coulter.
- (b) Charges for services not covered by this Agreement will be invoiced separately at the time of occurrence and at the prevailing rates for travel, expenses, parts, and labour.
- (c) The Customer acknowledges and agrees that Beckman Coulter reserves the right to vary the annual service charge from time to time after the Initial Period.
- (d) Beckman Coulter will advise the Customer in writing of any variation in the annual service charge and the Customer may cancel this Agreement within thirty (30) days of receiving the notice of the variation by advising Beckman Coulter in writing. If the Customer does not terminate this Agreement within thirty (30) days of receiving notice of the variation from Beckman Coulter then the Customer will be treated as having agreed to the variation in the annual service charge, and to the balance of the provisions of this Agreement continuing unchanged.
- (e) In the event that the Customer fails to pay an invoice by the due date, Beckman Coulter shall be entitled to charge the Customer a late fee and interest on all amounts due at the rate of 1.5% per month. Despite anything to the contrary in this clause, Beckman Coulter may require the Customer to pay all or some of the price in advance of providing Services. If the Customer fails to make advance payment when requested to do so or the Customer become delinquent in the payment of any sum due to Beckman Coulter (whether or not related to this Agreement), Beckman Coulter may cancel this Agreement or refuse to provide further Services and declare immediately due and payable all unpaid amounts for Services previously provided to the Customer. The Customer agrees to pay all collection costs, including but not limited to reasonable legal fees and expenses Beckman Coulter incurs as a result of the

Customer's failure to pay as provided in this clause.

- (f) Beckman Coulter and the Customer both recognize that there is a risk of wire fraud when individuals impersonating a business demand immediate payment under new wire transfer instructions. To avoid this risk, both Beckman Coulter and the Customer agree that transfer instructions provided in Beckman Coulter's invoice will apply. In the event that there is a change in the wire transfer instructions, both Parties must agree to an updated wire transfer in writing, using the Business Contact listed in the Service Contract, before any monies will be transmitted using the new wire instructions. In addition, the parties agree that they will confirm verbally the new wire instructions. Both Parties further agree that they will never change wire transfer instructions by email. Further, both Parties agree that they will never require an immediate payment under the new instructions. The Parties will provide for a ten (10) business day grace period to verify any wire transfer instruction changes before any outstanding payments would be due using the new instructions.

## 5. Exclusions

This Agreement does not include:

- (a) service calls relating to any malfunction of the Equipment which is not the result of any act or omission of or by Beckman Coulter. Where the malfunction of equipment is not caused by any act or omission of or by Beckman Coulter the Customer shall be liable for the cost of all service calls and replacement of parts resulting from such malfunction. This includes installation or replacement of a part or peripheral not manufactured or recommended by Beckman Coulter other than parts or peripherals installed by qualified Beckman Coulter personnel;
- (b) the supply or installation of parts to replace parts which have been rendered inoperable; and
- (c) the making of adjustments of any nature to the Equipment for the correction of faults caused by one or more of the following events:
  - (a) accident, fire, explosion of any origin, flood, power variance or failure, riot, civil commotion, act of war or any act of God including but not limited to lightning, windstorm, flood, and earthquake;
  - (b) the use of parts, supply items, accessories, reagents, or unauthorized modifications not manufactured or sold by Beckman Coulter;
  - (c) environmental conditions outside the instrument's operating range, such as temperature, humidity, space, and electrical supply;
  - (d) malfunction of the Equipment which is not the result of any act or omission of or by Beckman Coulter;
  - (e) misuse, abuse, and negligence other than on the part of Beckman Coulter personnel or agents;
  - (f) repair or maintenance carried out by persons other than qualified Beckman Coulter personnel or agents; or
  - (g) failure to use the Equipment in accordance with the manufacturer's operating instructions.

Beckman Coulter shall not be obligated to provide services under this Agreement for:

- (a) The moving, decontamination, de-installation or re-installation of the Equipment;
- (b) Uninterruptible power systems or line conditioners; and/or
- (c) Laboratory Information Systems ("LIS") consultation or troubleshooting. Such LIS service may be provided for a flat fee.

The Services, including its limitations and exclusions, are further described in the service description manual.

## 6. Reagents

Any service calls necessitated by poor quality reagent in the circumstances set out in this clause 6 will not be covered by the annual service fee payable by the Customer to Beckman Coulter in accordance with clause 4 of this Agreement. Where a problem occurs as a result of the poor quality of a reagent that has not been supplied by Beckman Coulter in circumstances where:

- (a) Beckman Coulter's quality control evaluation of the reagent proves the poor quality of the reagent; and
- (b) Beckman Coulter has established that there is no malfunction of the Equipment,

the Customer shall incur the cost of service calls resulting from such problem.

## 7. Warranties

- (a) Beckman Coulter warrants that the Services provided to the Customer under this Agreement will be rendered with due care and skill and be fit for the purpose as stated in the Service Contract.
- (b) Beckman Coulter shall provide to the Customer a ninety (90) day warranty for all parts installed by or all labour performed by qualified Beckman Coulter personnel or agents. For the avoidance of doubt, in the event a part is replaced during the 90 days warranty period, the 90 days warranty period does not renew upon provision of a replacement part. The warranty period expires after 90 days from the original installation date of the relevant part.
- (c) Except as set out above and to the extent permissible by law, all warranties and conditions imposed or implied by law or otherwise in respect of any goods or services supplied or to be supplied in accordance with this Agreement are hereby excluded.

## 8. Limitation and Proportional Reduction of Liability

- (a) Beckman Coulter's liability for breach of a condition or warranty in relation to goods or services supplied pursuant to this Agreement is limited to the following, as determined by Beckman Coulter:
  - (i) In the case of goods:
    - a) the replacement of the goods or the supply of equivalent goods;
    - b) the repair of the goods;
    - c) the payment of the cost of replacing the goods or acquiring equivalent goods; and/or
    - d) the payment of the cost of having the goods repaired.
  - (ii) In the case of services:
    - a) the supplying of the services again; and/or
    - b) the payment of the cost of having the services supplied again.
- (b) Except as set out above and to the extent permissible by law, Beckman Coulter's liability whether in contract, tort or otherwise is excluded, and for the avoidance of doubt Beckman Coulter excludes liability for all other losses however caused, including but not limited to loss of profits, loss of use of equipment or facilities or services, direct or indirect damage, consequential loss, damages suffered by third parties, death or personal injury. For the avoidance of doubt, nothing in this Agreement shall be interpreted as conferring or purporting to confer a benefit on a third party (being a party that is not party to this Agreement) and Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 shall not apply to this Agreement.
- (c) IN ADDITION TO ANY OTHER LIMITS ON LIABILITY IN THIS AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF BECKMAN COULTER, ITS AGENTS, DIRECTORS AND OFFICERS, AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT,

REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE CHARGES PAID BY THE CUSTOMER TO BECKMAN COULTER FOR THE PARTICULAR GOODS AND/OR SERVICES THAT ARE THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO ANY SUCH CLAIM.

- (d) Proportional Reduction of Liability: Beckman Coulter's liability (if any) under this Agreement for any loss and/or damage incurred by the Customer and/or any third party will be reduced proportionately to the extent that any fault, negligent act, or omission of the Customer (or its subcontractor, agent, or personnel) and/or third party contributed to those loss, damage, expense, or liability.

## 9. Indemnity and Waiver

The Customer agrees to indemnify and keep Beckman Coulter harmless from and against any claims, demands, suits and expenses by reason of injury or death of any person(s) or damage to any property, except as excluded hereafter: solely attributable to the fraudulent acts or omissions of Beckman Coulter, its agents or employees while on the premises of the Customer and arising out of Services provided.

Except as set out above, in no case shall Beckman Coulter be liable for damages to third parties, resulting directly or indirectly from the Beckman Coulter's performance of the Services under this Agreement.

Customer expressly waives any and all claims against Beckman Coulter (regardless of cause) for all loss or damage resulting from any peril customarily insured under primary and extended coverage insurance policies.

## 10. Insurance

Beckman Coulter shall effect and maintain:

- (a) workers compensation insurance as required by applicable laws; and
- (b) public liability and professional liability insurance for an amount appropriate for the purposes of this Agreement.

## 11. Maintenance and Service Undertaking

Beckman Coulter shall use all reasonable endeavours to provide appropriately trained personnel during the normal working hours of 9am to 5pm, Monday through Friday, public holidays excepted, to carry out the following in respect of the Equipment.

- (a) Remedial Maintenance - diagnosis and correction of Equipment malfunctions which occur under normal use of the Equipment;
- (b) Preventive Maintenance - prevention of Equipment failures and extension of useful life of Equipment. This maintenance shall be performed according to procedures recommended for the Equipment and shall be performed during the term of this Agreement on a schedule mutually agreed upon between the Customer and Beckman Coulter;
- (c) Replacement Parts - if the Service Contract to this Agreement states that this Agreement relates to the provision of labour and parts, then the supply and installation of all replacement parts which become inoperable under normal use of the Equipment will be limited to the satisfactory operation of the Equipment. Despite this, parts listed in the Exclusions List hereof shall not be covered by this clause. All replacement parts will be furnished on an exchange basis and the parts so removed on replacement becomes the property of Beckman Coulter.

## 12. Remote Support

If Beckman Coulter can provide remote management software, including diagnostics and other services for the Equipment, including PROService, the Customer must

maintain and provide network or other Internet access to the Equipment so Beckman Coulter can remotely access the Equipment. Customer acknowledges that Beckman Coulter retains ownership of any equipment Beckman Coulter provides for remote diagnostics and services capability. Beckman Coulter may, at its sole discretion, change the features and services of PROService, BeckmanConnect and other remote services at any time without prior notice to the Customer. Customer shall be responsible for providing network connection to access the Internet and maintaining responsibility for Internet service and security wherein Beckman Coulter shall have no liability whatsoever for and/or arising from, any outages, internet speed reduction, capacity constraints or other deficiencies affecting the same.

### 13. De-identification of Personal Data

The parties acknowledge that Beckman Coulter would not require access to any Personal Data, including patients' Personal Data, at any time in performance of its obligations under the Agreement. Where applicable, in the event any data is required to remedy technical issues and/or performance of the Equipment ("Permitted Purposes"), the Customer agrees that prior to providing or granting access to such data to Beckman Coulter, the Customer shall be responsible to ensure all Personal Data in such data, if any, are De-Identified and Coded to ensure that the identity of the individual to whom the data pertains is not identifiable to and is not traceable by Beckman Coulter and/or Beckman Coulter's Personnel. The Customer further represents that it has established policies and procedures in place to prevent the release of individuals' Personal Data and is responsible for informing and ensuring its employees to comply with the Customer's obligations in this clause. The Customer shall fully indemnify Beckman Coulter and its affiliates against any and all claims, losses or damages arising from or related to non-compliance of this clause including but not limited to costs on a solicitor/lawyer-client basis.

For the purpose of this clause:

- (a) "Personal Data" means any information, data and/or opinion relating to and about an identified or reasonably identifiable natural person;
- (b) "De-Identified" means the identity of the individuals is not known to and ensure data is not traceable by the Beckman Coulter and/or Beckman Coulter's Personnel; and
- (c) "Coded" means that a number, letter, symbol, or combination thereof (i.e. the code) has replaced identifying individual information (such as name or national registered identification number); and
- (d) "Beckman Coulter's Personnel" means employees, agent and/or contractor of the Beckman Coulter associated with the performance of its obligations under the Agreement.

### 14. Termination

Either party may terminate this Agreement at any time by written notice to the other party if:

- (a) the other party commits or allows to be committed a breach of any provision of this Agreement and fails to rectify the breach within 14 days after receipt of written notice from the other party specifying the nature of the breach and requiring the party in default to remedy the breach;
- (b) a petition is presented for the winding up of the other party and is not stayed, withdrawn or discharged within 21 days or a resolution is passed by the other party for its winding up;
- (c) a liquidator or a provisional liquidator is appointed in respect of the undertaking of the other party;
- (d) execution, distress or other like process of any court or authority is levied upon any of the property of the other party for an amount exceeding \$10,000.00 without it being paid, satisfied, withdrawn or discharged within 21 days; or
- (e) the other party enters into any arrangement or

composition with its creditors.

Termination of this Agreement under this clause 14 will not prejudice any claim either party may have against the other under this Agreement at the date of the termination.

### 15. Proration Schedule

Fifteen percent (15%) of the annual service charge for each month or part of a month the Agreement is in force, or the actual services rendered, whichever is higher, will be retained by Beckman Coulter in case this Agreement is cancelled prior to its expiration date; any balance will be returned to Customer. If Preventive Maintenance is completed, a minimum of 50% will be retained.

### 16. Goods & Services Tax (GST)

All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary. Where a payment or consideration for the goods and/or services is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by Beckman Coulter to the Customer. Payment of GST must be made at the same time as payment is due on the invoice for the goods and/or services. Beckman Coulter must issue the Customer with a correctly rendered invoice for any amount collected on account of GST.

### 17. Force Majeure

No failure or omission by either party to perform or observe the terms and conditions of this Agreement will, except in relation to obligations to make payments under it:

- (a) give rise to any right of action or claim against the defaulting party; or
- (b) be treated for any purpose as a breach of this Agreement;

if such failure or omission arises from any cause reasonably beyond the control of that party.

### 18. No Assignment

No party may assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party or parties.

### 19. Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

### 20. Entire Agreement

- (a) This Agreement constitutes the complete and entire Agreement between the parties with respect to the Equipment and the Services and supersedes all prior claims made with respect to the Equipment and the Services.
- (b) No other terms and conditions shall be included or implied unless detailed in the Service Contract to this Agreement.

### 21. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of New Zealand and each of the Parties hereby submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New Zealand.

### 22. Notices

Any Notice under this Agreement shall be provided to the email address set out in the Service Contract.

### 23. Confidentiality

This Agreement and any material transmitted herewith may contain information confidential or proprietary to either party, its subsidiaries or affiliates ("Confidential Information") and the receiving party shall:

- (a) hold such Confidential Information in strictest confidence

and not disclose such information to third parties without prior, written consent of the disclosing party; and

- (b) not collect, access, retain use or share the Confidential Information other than for the purpose for which it was transmitted by the disclosing party and/or the performance of the obligations under this Agreement.

#### *24. Dispute Resolution*

Each party submits to the non-exclusive jurisdiction of the courts of New Zealand, and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.

January 2024

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