



## BD GENERAL TERMS AND CONDITIONS

These BD General Terms and Conditions are entered into between Mangum Regional Medical Center on behalf of itself and its Affiliates (“**Customer**”), and Becton, Dickinson and Company, on behalf of itself and its Affiliates (“**BD**”), effective as of the date of the last signature below (the “**Effective Date**”). The BD General Terms and Conditions and any Schedules added from time to time by mutual agreement between the Parties or their Affiliates, and incorporated herein by reference are hereafter referred to as the “**Standard Agreement**”.

### I. GENERAL TERMS AND CONDITIONS

#### A. DEFINITIONS.

1. “**Acceptance**” or “**Accepted**” means, with respect to Software Product, Hosted Software or Hardware, the completion of Implementation Services or, if no Implementation Services are provided, the delivery of the Products or, as applicable, the protocols, keys or access codes needed to access and use the Products.
2. “**Affiliate**” means, with respect to a Party, any business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Party for so long as such relationship exists. For purposes of this definition, “control” means direct or indirect beneficial ownership of more than 50% of the voting share capital in such corporation or the equity or interests in profits of such other business entity (or such lesser percent as may be the maximum that may be owned pursuant to Applicable Laws of the state of incorporation or domicile, as applicable).
3. “**Analytics Data**” means insights to inform clinical or business decisions that are generated or created by the Products from their use including but not limited to mathematical and algorithmic analysis, monitoring data, solution data, patterns, trends, and correlations.
4. “**Applicable Laws**” means all applicable laws, ordinances, rules, regulations and lawful orders of any public authority or agency (including child labor laws), bearing on the performance by a Party of the Standard Agreement and Customer Order/Product Addendum.
5. “**Authorized Distributors**” means, distributors authorized and approved by BD to distribute the relevant Products under the Customer Order/Product Addendum.
6. “**Confidential Information**” means any confidential or proprietary information of a Party, however disclosed or recorded that is disclosed in connection with the Customer Order/Product Addendum (including, with respect to Customer, Healthcare Data, and, with respect to BD, Product(s) Data and Analytics Data).
7. “**Consumables**” means the consumable products (excluding Software and Hardware) that BD sells to customers generally and that are identified in a Customer Order/Product Addendum.
8. “**Customer**” means Customer or Affiliates of Customer, and those institutions identified in the attached **Schedule A – Eligible Purchaser List** to the extent their facilities are located in the United States, that purchase Products pursuant to a Customer Order/Product Addendum.
9. “**Customer Needs Identification**” means the process of identifying and designing offers for BD products and services that meet the specific needs and preferences of Customer.
10. “**Customer Order/Product Addendum**” means an agreement for specific Products, executed by the Parties pursuant to the Standard Agreement, which sets forth the pricing, fees and other Product specific terms and conditions. Each Customer Order/Product Addendum creates a separate agreement each of which incorporates by reference: (i) the General Terms and Conditions, (ii) any Schedule applicable to the Products provided under such Customer Order/Product Addendum, and (iii) any Customer Order/Product Addendum attachments. For the avoidance of doubt, any reference in a Customer Order/Product Addendum to “Master Agreement and Schedules” means this Standard Agreement and any Schedules attached hereto. If BD accepts a purchase order from Customer for Products and/or Services that are not identified in a Customer Order/Product Addendum, then that purchase order will constitute a Customer Order/Product Addendum under this Standard Agreement, except that any conflicting or additional terms in the purchase order will have no force or effect.
11. “**Customer Order/Product Addendum Term**” means the period of time specified in a Customer Order/Product Addendum during which Customer is entitled to access and use a Product, including any applicable Rental Term or Subscription Term (as such terms are defined below).
12. “**Data**” means Analytics Data, Healthcare Data, and Product(s) Data.
13. “**Documentation**” means the User Guide, user manual, labeling, release notes, technical specifications, Product Security White Papers and other, similar information applicable to a Product, written in natural language, that BD makes generally available to end user purchasers, lessees, and licensees of the Products.
14. “**Embedded Software**” means software or programmable code embedded or integrated into Hardware that enables functionality of the Hardware, together with all Updates to Embedded Software.
15. “**Evidence Generation**” means the collection and analysis of data to generate evidence that supports the safety, efficacy, and clinical utility of Products and healthcare.
16. “**Hardware**” means hardware sold, leased, rented or otherwise provided under a Customer Order/Product Addendum.
17. “**Healthcare Data**” means data that originates from Customer and is stored, transmitted, or accessed through a Product including but not limited to PHI and personally identifiable information of any patient, or member of Customer’s workforce.
18. “**Hosted Software**” means BD applications software, including any incorporated Third Party Software or data, hosted by or on behalf of BD and made available to Customer under a Customer Order/Product Addendum as a service over the Internet or other computer network.
19. “**Implementation Services**” means the professional services and training provided by BD to assist Customer in the implementation of a Product.
20. “**Implementation Timeline**” means the timeline to perform implementation activities.



21. **“Intellectual Property”** means all (a) processes, methodologies, procedures and trade secrets, algorithms, apparatus, circuit designs and assemblies, scripts, databases, data collections, data models, designs, diagrams, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, methods, models, network configurations and architectures, protocols, schematics, specifications, subroutines, techniques, tools, uniform resource identifiers, user interfaces, web sites and domain names, (b) trademark, service mark, logos, or trade dress, (c) Software, tools and machine-readable texts and files, and (d) copyrights, literary work or other work of authorship, including documentation, reports, manuals, training materials, artwork, drawings, fonts, photographs, charts and graphics.
22. **“Interface”** means software provided by BD as an interface between Software Product, Embedded Software, or Hardware and any element of Technology Environment, together with all Updates.
23. **“Lease” or “Rental”** means any arrangement whereby the Customer Order/Product Addendum specifies access to Hardware other than a cash purchase, including any “reagent rental” or similar financing structure.
24. **“MMS Products”** means medication management, dispensing and infusion products, including, but not limited to, Alaris™, Pyxis™, and BD HealthSight™ family of products.
25. **“Party”** means BD or Customer, as applicable.
26. **“PHI”** means “protected health information” as defined in 45 CFR §160.103, of any patient of Customer.
27. **“Product(s)”** means Hardware, Consumables, Hosted Software, Services, Support and/or Software Products, and includes MMS Products.
28. **“Product(s) Data”** means information and data regarding the performance of a Product, including but not limited to operations, diagnostics, performance, logs, alarms, alerts, notifications, malfunctions, maintenance information, location information.
29. **“Product Development”** means researching, developing, designing, and testing new or improved technologies, products, and Upgrades to meet the evolving needs of customers, patients, or clinicians.
30. **“Purchase Commitment”** means the volume of eligible Consumables Customer shall be committed to purchase in any given period of time as specified in a Customer Order/Product Addendum.
31. **“Remote Support Service” or “RSS”** means Support that is provided remotely, rather than onsite, using an electronic connection from BD’s servers to Customer’s Hardware.
32. **“Rental Equipment”** means hardware that is leased to Customer under a Customer Order/Product Addendum.
33. **“Rental Term”** means the time period that Rental Equipment is rented pursuant to the applicable Customer Order/Product Addendum/Schedule.
34. **“Rental Fee”** means the monthly rental fee stated in the Customer Order/Product Addendum for each unit of Rental Equipment on the first day of each month during the Rental Term.
35. **“Services”** means training, educational, consulting, or professional services provided under a Customer Order/Product Addendum, other than training or professional services provided as part of Implementation Services and Support.
36. **“Software”** means Software Products, Embedded Software, and Interfaces.
37. **“Software Products”** means BD applications software, including any incorporated Third Party Software or data, in object code licensed to Customer under a Customer Order/Product Addendum, together with all Updates.
38. **“Subscription Term”** means the initial term for subscription services stated in the Customer Order/Product Addendum that is applicable to each type of BD Software.
39. **“Support”** means Technical Support, Updates, and warranty, maintenance and repair services for Hardware, as described in the applicable Customer Order/Product Addendum.
40. **“Technical Support”** means: (i) responding to Customer inquiries about features, functions and operation of Products; and (ii) receiving and acknowledging Customer reports of failure of a Products and working to verify, diagnose and correct the failure. Technical Support is performed by members of BD’s Workforce by phone, text, email, instant messaging or other electronic means.
41. **“Technology Environment”** means the equipment, software, data (including Healthcare Data), materials, and consumables, provided by Customer or third parties on behalf of Customer, on which or with which a Product is used. For avoidance of doubt, Technology Environment does not include Hardware, Software, Analytics Data, or Product(s) Data.
42. **“Third Party Software”** means those software components contained within, or necessary for the proper operation of, the Software Products or Hosted Software, which are not developed or owned by BD.
43. **“Update”** means software to update, patch, fix, enhance or otherwise modify an already existing feature for the purposes of maintaining current functionality of the Hardware, Software Product, Embedded Software, or an Interface that is a less substantial change than an Upgrade, as designated by BD in its sole discretion and made generally available to its customers.
44. **“Upgrade”** means any new functionality to either Software or Hardware that does not exist in the current configuration and which requires additional payment by the Customer. “Functionality” is defined as a combined set of features that each BD product can perform that is a more substantial change than an Update, as designated by BD in its sole discretion and made generally available to its customers.



45. **"User"** means a member of Customer's Workforce or a natural person who is authorized by Customer to use the Products.
46. **"User Guide"** means the then current applicable user guide, user manual, or written directions for use for each type of Product acquired by Customer
47. **"Workforce"** means employees, consultants, volunteers, trainees, and other persons whose conduct is under the direct control of a Party, whether or not they are paid by the Party.

**B. CUSTOMER ORDER/PRODUCT ADDENDUM.** Customer may acquire one or more Products from time to time by entering into Customer Order/Product Addendums. An Affiliate may enter into a Customer Order/Product Addendum, and each Party represents to the other Party that such Affiliate has the authority to enter into such Customer Order/Product Addendum and bind itself to the terms of that Customer Order/Product Addendum.

**C. ACCEPTANCE OF DELIVERY; USE.** Products will be deemed Accepted by Customer upon delivery, and for Products that are installed by BD, upon completion of Implementation Services. MMS Products will be deemed Accepted by Customer upon delivery (for those MMS Products not requiring Implementation Services) or upon completion of the applicable Implementation Services, provided that such MMS Product functions substantially in accordance with the specifications of its User Guide. Upon completion of applicable Implementation Services, Customer will execute BD's standard confirmation form.

**D.** Products are intended for use in accordance with the Documentation. Certain Products are labeled for Research Use Only and are not for use in diagnostic or therapeutic procedures. Customer shall use the Products in a manner consistent with Applicable Laws, and shall be responsible for determining that the Product is appropriate for its use. Products purchased under the Customer Order/Product Addendum are NOT FOR RESALE and BD may, without limitation of other rights or remedies, prior notification or penalty, terminate access to such Customer Order/Product Addendum and void any applicable warranty, if any Customer resells any Products or provides such Products for use by another party.

#### **E. TERM AND TERMINATION.**

1. **Agreement Term.** The Standard Agreement will remain in effect until terminated, and will remain in effect thereafter with respect to any Customer Order/Product Addendum entered into prior to the effective date of termination. If a Customer Order/Product Addendum does not include an expiration date, the Customer Order/Product Addendum shall terminate concurrently with and on the terms set forth in the Standard Agreement.
2. **Termination for Convenience.** Either Party may terminate the Standard Agreement at any time upon 90 days prior written notice to the other. Any right to terminate a Customer Order/Product Addendum for convenience will be specified in the Customer Order/Product Addendum. In the event of termination of the Standard Agreement, the Standard Agreement will survive with respect to any Customer Order/Product Addendums that are still in effect.
3. **Termination for Ineligibility.** Either Party may immediately terminate any Customer Order/Product Addendum and the Standard Agreement, as its sole remedy, if the other Party's key personnel is convicted of an offense related to health care or listed by a federal agency as being debarred, excluded, or otherwise ineligible for federal healthcare program participation. In the event that an institution is no longer a Customer, BD may terminate immediately such institution's access to any Customer Order/Product Addendums hereunder.
4. **Termination for Cause.** Either Party may terminate any Customer Order/Product Addendum, and BD may terminate or suspend performance of Support, if the other Party materially breaches such Customer Order/Product Addendum or applicable Schedule and, except with respect to a payment breach, fails to cure such breach within 30 days after written notice of the breach.
5. **Effect of Termination.**
  - a) Customer Order/Product Addendum/Product Addendum. Except for the section under Termination for Ineligibility, the termination or expiration of the Standard Agreement shall not terminate any Customer Order/Product Addendum between BD and Customer, and any such Customer Order/Product Addendum shall survive the expiration or termination of the Standard Agreement, according to its terms and shall be subject to the applicable terms and conditions of the Standard Agreement for the term of such Customer Order/Product Addendum. Termination of the Standard Agreement or any Customer Order/Product Addendum will not release a Party from any liability that exists at the time of termination or that accrues thereafter with respect to any act or omission before termination. BD may, upon termination for cause, and to the extent permitted by applicable law and in addition to and without prejudice to any other remedy available at law or equity: (a) cancel one or more rental term(s) and either require Customer to return Rental Equipment or require Customer to pay, an amount equal to the present value of the unpaid balance of all rental fees for each unexpired Rental Term under the applicable Customer Agreement (calculated using a discount rate of (6%) per annum).
  - b) Confidential Information. Upon any termination of the Standard Agreement (other than to the extent relevant to a Customer Order/Product Addendum that remains in effect) or termination or expiration of a Customer Order/Product Addendum, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) use reasonable efforts to promptly purge the other Party's Confidential Information from its computer storage or other media, including online and off-line libraries (however, to the extent it is not feasible for the Party to purge such Confidential Information from back-up storage, the Party shall retain it in accordance with Section I.H (Confidential Information/Retention of Rights); and (iii) upon the request of the other Party, certify in writing that it has complied with the terms of this section.

#### **F. PRICING; PAYMENT.**

1. **Pricing and Fees.** Each Customer Order/Product Addendum sets forth the prices, fees and other specific terms and conditions for a specific Product(s). Except as otherwise set forth in a Customer Order/Product Addendum, to take into account inflation, the product pricing set forth herein shall not be fixed and may be increased (in part or in whole) by BD annually.
2. **Payment Terms.** Payment is due no later than 30 days from the date of invoice. The Rental Fees and the monthly subscription or support fees for MMS Products are stated in the applicable Customer Order/Product Addendum and, unless stated otherwise in the applicable Customer Order/Product Addendum, are due on the first day of each month during the Rental Term, Subscription Term, and Support Term, as applicable. No fee-based credit card (after point of sale) or third party payment methods will be accepted by BD. Unless otherwise stated in a Customer Order/Product Addendum, payment obligations are unconditional and non-cancelable, and not subject to abatement or set-off.



3. **Late Payments.** BD may charge interest at the rate of one and one-half percent per month, or at such lesser rate as may be required by law, on any amount that is unpaid on the due date and is not disputed by Customer in good faith.
4. **Taxes.** Customer shall pay all taxes and assessments including interest and penalties which might be levied against the Products during the term of a Customer Order/Product Addendum. BD will not collect sales tax if Customer provides BD with written evidence of its exemption.
5. **Distributors.** If Customer purchases any Product through an Authorized Distributor, then the applicable terms of the Customer's agreement with the Authorized Distributor govern all sales taxes, ordering, invoicing, payment, delivery, and return terms. The ultimate price of the Product to the Customer may be higher or lower than the price in the applicable Customer Order/Product Addendum based on the terms and conditions of the Customer's agreement with the Authorized Distributor.
6. **Disclosure Requirements.** The value of any rebates, discounts or incentives provided to Customer may constitute a "discount or other reduction in price" under Section 1128B(b)(3)(A) of the Social Security Act [42 U.S.C. Sec. 1320a-7b(b)(3)(A)]. BD and Customer shall satisfy any and all requirements imposed on buyers or sellers, as applicable, relating to discounts or reductions in price, including, when required by law, to disclose all discounts or other reductions in price received from BD and to accurately report under any state or federal health care program the net cost actually paid by Customer.

#### **G. ORDERING; DELIVERY AND INVOICING; RETURNS FOR DIRECT PURCHASES.**

1. **Delivery.** Customer Order/Product Addendums or purchase orders for Products purchased directly from BD will indicate the location for delivery. All direct shipments will be F.O.B. shipping point. Lead-time for Products vary and BD will endeavor to ship promptly on availability.
2. **Invoicing.** BD invoices for Products that it delivers direct. Invoices are sent at shipment, or for qualifying Hardware, upon implementation, or at any other time agreed in the Customer Order/Product Addendum. Unless otherwise agreed in a Customer Order/Product Addendum, shipping & handling charges and insurance for Products are prepaid and added to the invoice. Priority/rush delivery parts shipments will be billed to Customer at the then-current rate.
3. **Returns.** Customer may return a direct purchased Product pursuant to the then-current applicable BD return policy, which may not provide for the return of certain products, including Hardware that has been installed.

#### **H. WARRANTIES.**

1. **Limited Warranty.** BD warrants to the Customer that, provided Customer uses, stores and maintains Products in accordance with the Documentation, all Products furnished under the Customer Order/Product Addendum will meet the specifications stated in their respective Documentation and that, unless otherwise set forth in the Customer Order/Product Addendum, all Products furnished under the Customer Order/Product Addendum shall be free from defects in material and workmanship for either the warranty period or expiration date stated in the Documentation for such Products, except (a) for Products without a stated warranty period or expiration date, the warranty period shall be six months; (b) for Alaris™ Products, the warranty period shall be one year, and (c) for BD Pyxis™ Products, the warranty period shall be 90 days (the, "**Warranty Period**"). BD further warrants that its employees have the skills and qualifications necessary to perform Implementation Services, Support, and Services in a professional manner in accordance with the generally accepted industry standards. Customer's sole and exclusive remedy for any breach of this warranty shall be (i) repair or replacement of the non-conforming Products, (ii) a refund of the amount paid to BD (less depreciation) for non-conforming Products, or (iii) correct any service not performed in accordance with the warranty, with such remedy to be at BD's option. Customer must provide written notice of any such non-conformance to BD within the Warranty Period. Any alteration, abuse, misuse, further manufacture, packaging, processing, adjustment or repair by any person or entity other than BD or a person or entity authorized in writing by BD shall void any Products warranty. The Limited Warranty shall apply to Services performed during the term of an in effect Support Agreement.

#### **2. Disclaimers.**

- a) THE LIMITED WARRANTY PROVIDED UNDER THIS SECTION OR ON ANY CUSTOMER ORDER/PRODUCT ADDENDUM OR SCHEDULE ARE THE ONLY WARRANTIES PROVIDED BY BD AND IS IN LIEU OF ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, INTEROPERABILITY, QUALITY OR CONDITION, ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS, WHETHER LATENT OR PATENT.
- b) CUSTOMER IS RESPONSIBLE FOR THE PERFORMANCE OF ITS RESEARCH AND THE CARE OF ITS PATIENTS, AND DETERMINING THE APPROPRIATENESS OF THE PRODUCTS FOR ITS USE; CUSTOMER ACKNOWLEDGES THAT BD IS NOT RESPONSIBLE FOR THE DELIVERY OF MEDICAL CARE OR MEDICAL SERVICES TO CUSTOMER'S PATIENTS OR ANY OTHER PERSON. THE PRODUCTS ARE TOOLS TO BE USED BY CUSTOMER BUT DO NOT REPLACE PROFESSIONAL SKILL OR JUDGMENT. BY PROVIDING PRODUCTS TO CUSTOMER, NEITHER BD NOR ANY EMPLOYEE OF BD IS ENGAGED IN THE PRACTICE OF MEDICINE. CUSTOMER IS RESPONSIBLE FOR VERIFYING THE ACCURACY, COMPLETENESS, AND PERTINENCE OF ANY PHARMACOLOGICAL, MEDICAL, PATIENT, LEGAL OR OTHER RESULTS, DATA OR INFORMATION ENTERED IN, RECEIVED BY, PROCESSED BY, STORED IN, TRANSMITTED BY, PRODUCED BY, DISPLAYED BY, OR USED IN CONNECTION WITH THE PRODUCTS. CUSTOMER ASSUMES ALL RISKS AND LIABILITIES ASSOCIATED WITH THE USE OF SUCH INFORMATION, WHETHER SUCH INFORMATION IS USED ALONE OR IN COMBINATION WITH OTHER INFORMATION. BD IS NOT RESPONSIBLE FOR THE PERFORMANCE, SUPPORT, OR ANY OTHER ASPECT OF TECHNOLOGY ENVIRONMENT.
- c) CUSTOMER ACKNOWLEDGES THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. BD DOES NOT GUARANTEE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR, NOR DOES BD GUARANTEE ANY CONNECTION TO OR TRANSMISSION FROM THE COMPUTER NETWORKS.

#### **I. CONFIDENTIAL INFORMATION; RETENTION OF RIGHTS.**

1. **Publicity.** A Party shall obtain the other Party's prior written consent, before (i) issuing any press release or other public disclosure regarding the Standard Agreement, any Customer Order/Product Addendum or terms or conditions or (ii) using the other Party's name, trademark, service mark, logos, or trade dress (collectively, "**Marks**"). Each Party must comply with the other Party's requirements for use of either Party's Marks in any press release or other promotional material.



2. **Confidentiality Obligations.** Except as provided below, neither Party shall disclose Confidential Information to any other person, or entity other than the Federal Government, a Party's advisors for purposes consistent with the Standard Agreement, or as required by law. In the event a Party in receipt of Confidential Information ("Receiving Party") is requested or becomes compelled, by a court of competent jurisdiction, administrative agency or other governmental body, to disclose Confidential Information of the Party that disclosed the Confidential Information ("Disclosing Party"), the Receiving Party will provide the Disclosing Party with prompt notice. BD's obligations in this paragraph and the exceptions below supersede any obligations of BD or any BD representative contained in any confidentiality agreement or statement executed or acknowledged at the entry of any Customer facility, which agreements or statements are void.

3. **Exceptions.** The obligations of this confidentiality section do not apply to information that: (i) was in the public domain or was known to the Receiving Party before the information was received by the Receiving Party; (ii) is developed by the Receiving Party or on its behalf independently of the information disclosed by the Disclosing Party as shown by written record; (iii) is acquired by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; or (iv) becomes public knowledge without breach by the Receiving Party of any obligations of confidence to the Disclosing Party.

4. **Retention of Rights.** BD owns or has rights to all Intellectual Property embodied or embedded in, or practiced by, the Products, Documentation, or Analytics Data or Product(s) Data (as defined in a Schedule), and all rights therein. No services, including design Technical Support or advisory services, will be performed as works made for hire and BD retains full rights to design or market the same or similar designs for other customers. Customer acknowledges that BD is in the business of, among other things, creating Products for its customers. BD may create or sell any product or service to another customer provided that it will not use the Confidential Information of Customer in so doing. Some Products are sold subject to the terms of a label license. If Customer gives to BD any idea, proposal, suggestion or feedback, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements ("Feedback"), Customer gives to BD, without charge, royalties or other obligation to Customer, the right to make, have made, create derivative works, use, share and commercialize Feedback in any way and for any purpose. Customer will not give Feedback that is subject to a license that requires BD to license its software, technologies or documentation to any third party because BD includes Feedback in them.

## J. INDEMNIFICATION.

1. **General Indemnification.** Each Party shall defend against and indemnify the other Party for any loss, damages, or liability, including reasonable attorneys' fees, resulting from any third party claim ("Claim") to the extent arising from the indemnifying Party's (a) negligence or willful misconduct, and (b) breach of its warranty under a Customer Order/Product Addendum. In addition, BD shall defend against and indemnify Customer for any Claim to the extent arising from the breach by BD of its express warranty provided under the Customer Order/Product Addendum, and Customer shall defend against and indemnify BD for any Claim to the extent arising from, (x) the negligence or willful misconduct of any healthcare professional in performing services in a healthcare facility owned or operated by Customer. The indemnified Party shall give prompt notice of the Claim to the indemnifying Party; however, any delay in giving notice will not excuse the indemnifying Party's obligations under this section, except to the extent the indemnifying Party has been prejudiced by the delay. The indemnified Party shall cooperate with the indemnifying Party in the defense of the Claim and in any settlement of the Claim; however, the indemnified Party may employ separate counsel, at its expense, to provide or participate in the defense, and the indemnifying Party may not settle a Claim unless the settlement completely and forever releases the indemnified Party from all liability with respect to the Claim.

### 2. Infringement Indemnification.

a) **BD Obligations.** Notwithstanding the general indemnification section, and subject to the exceptions noted below, BD shall defend Customer against any Claim that BD's manufacture or sale of a Product infringes any patent or copyright of such person enforceable in the U.S. or misappropriates any trade secret of such person ("Infringement Claim"). On the occurrence of any Infringement Claim, or in the event BD believes an Infringement Claim is likely, BD may, at its option (i) modify the Product to make it non-infringing, or substitute functionally equivalent hardware or software; or (ii) obtain a license to the applicable third party intellectual property rights; or (iii) refund the purchase price of the Product in question.

b) **Exceptions.** BD will have no obligation or liability to the extent the Infringement Claim arises from: (i) the combination or use of the Product with products, services, hardware, software, technology, data or other materials not furnished or approved by BD; (ii) modification of the Product, except as expressly authorized by BD in writing; or (iii) use of the Product other than in accordance with the Documentation, in violation of the Customer Order/Product Addendum or Applicable Laws, or after notice from BD that Customer should cease use of the Product.

c) **Sole Remedy.** The obligations set forth in this section will constitute BD's entire liability and Customer's sole remedy for any actual or alleged Infringement Claim.

## K. LIMITATION OF LIABILITY.

### 1. Excluded Liabilities.

a) NO PARTY WILL BE LIABLE TO THE OTHER PARTY FOR: (I) ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) ANY DAMAGES FOR BUSINESS INTERRUPTION; OR (III) REPROCUREMENT COSTS, LOSS OF PROFITS, INCOME, BUSINESS, USE, DATA OR GOODWILL.

b) Any warranties or indemnification obligations provided hereunder or in any Customer Order/Product Addendum or Schedule will not apply to failure of any Products, claims, losses, damages caused by (i) Customer's abuse, neglect or misuse of the Product or failure to maintain the Product in accordance with its Documentation or resulting from any failure to comply with the Customer responsibilities as may be set forth in the Customer Order/Product Addendum or Schedule; (ii) implementation, repair, modification, alteration, adjustment, or relocation of the Product other than as expressly authorized by BD; (iii) malfunction or failure of any element of Technology Environment or use of the Product with any element of Technology Environment other than as expressly authorized by BD; (iv) Customer's failure to maintain the physical environment for the Product (including air quality, temperature, and humidity) specified in the Documentation; (v) malicious software not introduced by BD; or (vi) Customer's failure to permit installation of an Update.



2. **Liability Limitation.** Excluding claims for the total fees due under a Customer Order/Product Addendum, the total liability of a Party in connection with any matter arising from or relating to a Customer Order/Product Addendum (whether in contract, tort, negligence or otherwise) will be limited to the amount of all fees paid or to be paid by Customer under the Customer Order/Product Addendum(s) to which the matter relates during the 12 month period immediately preceding the event giving rise to such liability.

3. **Exceptions.** The exclusions set forth in Section K.1 (Excluded Liabilities) and the limitation set forth in Section K.2 (Liability Limitation) will apply to the fullest extent permitted by Applicable Laws, but will not apply to any liability arising from: (i) indemnification obligations hereunder related to death or bodily injury; or (ii) a Party's fraud, gross negligence or willful misconduct.

**L. COMPLIANCE WITH APPLICABLE LAWS.** Each Party hereby represents that it: (i) is a business entity duly organized and validly existing and in good standing under the Applicable Laws of its jurisdiction of organization; (ii) is qualified or licensed to do business and in good standing in every jurisdiction where such qualification or licensing is required; (iii) has the corporate power and authority to negotiate, execute, deliver and perform its obligations under the Standard Agreement and Customer Order/Product Addendum, and (iv) as of the Effective Date, is not excluded from participation from any federally funded health care program (including, without limitation, Medicare and Medicaid) (each, a "Program"). If either Party becomes excluded from any Program, then such Party will promptly notify the other Party. Each Party hereby represents that it shall comply with all Applicable Laws, including legal notification requirements.

**M. ACCESS TO RECORDS.** To the extent BD provides Services, until the expiration of four years after the furnishing of such Services, BD shall make available to the Secretary, United States Department of Health and Human Services (HHS), and the United States Comptroller General, and their representatives, upon written request, access to the Customer Order/Product Addendum and such books, documents and records that are necessary to certify the nature and extent of any cost incurred for services under the Customer Order/Product Addendum. If BD carries out any duties of the Customer Order/Product Addendum involving Services through a subcontract where the cost or value of the services component of such subcontract is \$10,000 or more over a 12-month period with a related organization, the subcontract shall contain a clause which permits access by the Secretary, HHS, the United States Comptroller General, and their representatives to the related organization's books, documents and records. In the event the Customer Order/Product Addendum is not subject to the provisions of 42 USC 1395x(v)(1)(I) and 42 CFR 420.300 et. seq. or relevant regulations, this section shall be null and void.

**N. INSURANCE.** BD will maintain: (i) commercial general liability insurance including Products and Completed Operations insurance, and, including Customer as an additional insured to the extent of the indemnification obligations hereunder with per occurrence limits and aggregate limits of \$10,000,000 and \$25,000,000, respectively; (iii) professional errors and omissions insurance that contains cyber liability and privacy notification insurance with per claim limit and aggregate limits of \$15,000,000; and (iv) workers' compensation insurance in compliance with statutory requirement and employers' liability insurance in an amount of \$2,000,000 per accident. Notwithstanding the foregoing, the Parties understand and agree that BD may self-insure for all or part of the insurance required hereunder. If any of the required policies are written on a claims-made basis, then such policies will be maintained for a period of not less than three (3) years following the termination or expiration of this Agreement. Customer may access BD's Memorandum of Insurance (MOI) at any time by using the web address: <https://online.marsh.com/marshconnectpublic/marsh2/public/moi?client=D409>

**O. GOVERNING LAW.** All claims, controversies or disputes arising out of or relating to the Standard Agreement or a Customer Order/Product Addendum, the relationship of the Parties and/or the interpretation and enforcement of their respective rights and obligations herein, will be governed by the laws of the State identified in Customer's Notice Address, without reference to its conflict of laws principles.

**P. FORCE MAJEURE.** Except for the obligation to pay fees when due, the performance by any Party of any obligations herein or under a Customer Order/Product Addendum is excused when a Party's performance is hindered or delayed by any act or cause beyond its reasonable control including acts of nature, epidemic, pandemic, the public enemy, terrorism, insurrections, riots, labor disputes (including lockouts or boycotts), fire, explosion, flood, acts of government, power outage, failure of the internet, acts of third parties, or natural disaster (each, a "Force Majeure Event") for as long as such Force Majeure Event continues. The Party so affected by the Force Majeure Event must give prompt written notice to the other Party and, to the extent practicable, describe in reasonable detail the nature of the Force Majeure Event. Either Party may terminate, without penalty, the applicable Customer Order/Product Addendum if a Force Majeure Event continues for more than 90 continual days.

**Q. ASSIGNMENT.** Neither Party may assign, sell, or otherwise transfer the Standard Agreement or a Customer Order/Product Addendum without the prior consent of the other Party; except, and with notice (a) to an Affiliate or (b) in connection with a sale or transfer of all or substantially all of the assets of such Party related to the subject matter described therein, provided that the assignee agrees in the applicable transaction documents (or in a separate agreement) to perform all the assignor's obligations under the Standard Agreement or Customer Order/Product Addendum.

**R. ADDITIONAL TERMS:**

1. **No Waiver.** Either Party's failure to insist upon performance of any provision of the Standard Agreement or a Customer Order/Product Addendum is not a waiver of any of its rights under the Standard Agreement or Customer Order/Product Addendum. No waiver under the Standard Agreement or a Customer Order/Product Addendum will be valid or binding unless set forth in a writing signed by the Party against which enforcement of the waiver is sought. The waiver will constitute a waiver only with respect to the specific matter described in the waiver and will not impair the rights of the Party granting the waiver in any other respect or at any other time. No delay or forbearance by either Party in exercising any right under the Standard Agreement or a Customer Order/Product Addendum will be deemed a waiver of that right.

2. **Severability.** If any provision of the Standard Agreement or a Customer Order/Product Addendum should for any reason be held invalid, unenforceable or contrary to public policy, the remainder of the Standard Agreement shall remain in full force and effect.

3. **Notices.** The term "notice" as used throughout the Standard Agreement shall mean written notice, except where specifically provided herein to the contrary. Notice shall be delivered by: (i) certified mail, return receipt requested (or the equivalent); (ii) hand delivery with receipt acknowledged; (iii) overnight courier service that provides a delivery receipt to the above Notice Addresses or to such other address or person as a Party may specify by notice given in accordance with this provision. Notice given in accordance with this provision shall be deemed delivered: (X) when received; or (Y) upon refusal of receipt.

4. **Survival.** The following provisions shall survive termination of the Standard Agreement or termination or expiration of a Customer Order/Product Addendum: Confidential Information, Retention of Rights, Indemnification, Limitation of Liability, Use, Payment, Insurance, Survival, and Governing Law.



5. **Controlling Terms/Order of Precedence.** Any conflict between provisions of the Customer Order/Product Addendum, the BD General Terms and Conditions and any Schedule will be resolved by giving precedence in the following order: (i) Customer Order/Product Addendums; (ii) Schedules; and (iii) the BD General Terms and Conditions.

6. **Counterparts.** The Standard Agreement and any Customer Order/Product Addendum may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument. Counterparts may be delivered by electronic mail in portable document format, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

7. **Entire Agreement.** The Standard Agreement together with any Customer Order/Product Addendums (i) are the entire agreement between the Parties and supersedes any other oral or written communications, advertisements or understandings with respect to the subject matter hereunder; (ii) supersede any and all pre-printed or other terms on any purchase orders (other than the quantity, type of Product and US delivery location), proposals, quotations and other similar documents; and (iii) supersede any Customer provided "click-through" agreements, "browse-wrap" agreements, "shrink-wrap" agreements, and any other electronic agreements (if any).

8. **Amendment.** No amendment of the Standard Agreement or Customer Order/Product Addendum will be valid unless such amendment is made in writing and is signed by authorized representatives of BD and the applicable Customer.

9. **No Agency.** Nothing in the Standard Agreement or Customer Order/Product Addendum may be construed to place the Parties in the relationship of partners, joint ventures, principal and agent, or employer and employee. Neither Party may assume, create, or incur any liability or obligation in the name of or on behalf of the other Party by virtue of this Agreement. Each Party shall bear the costs of performance of its obligations under the Standard Agreement and any Customer Order/Product Addendums.

10. **No Third-Party Beneficiaries.** The Parties agree that there are no third party beneficiaries of the Standard Agreement, except Customer's Affiliates to the extent they execute a Customer Order/Product Addendum.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute the Standard Agreement.

**MANGUM REGIONAL MEDICAL CENTER  
#10010264**

Notice Address 1 Wickersham St.  
City/State/Zip: Mangum, OK 73554-9117  
Attention: \_\_\_\_\_

**BECTON, DICKINSON AND COMPANY**

Notice Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Attention: \_\_\_\_\_

Agreed to By: \_\_\_\_\_

Agreed to By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

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

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

At the execution of the Standard Agreement, the Parties will complete the following table as to any Schedules entered into by mutual agreement and incorporated herein by reference. The Parties will continue to update this table as additional Schedules are added from time to time by mutual agreement between the Parties and incorporated herein by reference.

	Schedule Reference	Schedule Description
<input type="checkbox"/>	SCHEDULE A:	ELIGIBLE PURCHASER LIST
<input type="checkbox"/>	SCHEDULE B:	HARDWARE SOFTWARE & SERVICE
<input type="checkbox"/>	SCHEDULE C:	THIRD PARTY SOFTWARE
<input type="checkbox"/>	SCHEDULE D:	BUSINESS ASSOCIATE AGREEMENT
<input type="checkbox"/>	SCHEDULE E:	BD PYXIS™ RENTAL TERMS
<input type="checkbox"/>	SCHEDULE F:	BD PYXIS™ IMPLEMENTATION TERMS
<input type="checkbox"/>	SCHEDULE G:	BD PYXIS™ SUPPORT TERMS (COMPREHENSIVE, ENHANCED AND PREMIER)



**SCHEDULE A: ELIGIBLE PURCHASER LIST**

ELIGIBLE PURCHASER	ADDRESS	CONTACT INFORMATION





## SCHEDULE B: HARDWARE, SOFTWARE AND SERVICE

This Hardware, Software and Service Schedule to the BD General Terms and Conditions (“**Hardware Schedule**”) is made part of the Standard Agreement entered into by the Parties.

### I. HARDWARE PURCHASE, LEASE OR RENTAL TERMS AND CONDITIONS

**A. DEFINITIONS.** Terms used and not defined herein have the meaning assigned to them elsewhere in the Standard Agreement.

#### B. HARDWARE.

1. **License.** Subject to the terms of the applicable Customer Order/Product Addendum, BD hereby grants to Customer a limited, non-exclusive, non-sublicensable, revocable non-transferable license during the term of the Customer Order/Product Addendum, to access and use, and to permit Users to access and use, in object form only the Embedded Software and Interfaces that are part of the Hardware for use in the ordinary course of Customer’s internal business in accordance with the Documentation for the Hardware, provided that all licensing of Third Party Software will be subject to the terms of the Third Party Software Schedule. Embedded Software, Interfaces and Documentation may only be used in connection with the specific Hardware with which they relate during the Customer Order/Product Addendum Term, and for no other purpose.

2. **Returns.** Any Hardware returns shall be performed in accordance with the applicable Return Goods Policy. Should Hardware be returned to BD for any reason, Customer shall purge the Hardware of Healthcare Data, properly clean (and, as appropriate, decontaminate) the Hardware and shall certify same to BD. Customer shall then deliver the Hardware, properly packed, F.O.B. destination, freight prepaid and allowed, to the delivery address specified by BD.

3. **Resale of Hardware.** Customer acknowledges that it is acquiring the Hardware for its own use and not for resale. In the event Customer resells the Hardware owned by Customer to a third party, Customer shall notify BD in writing of the date of sale and provide to BD the buyer’s contact information, including name, complete address, (including city, state and zip code), phone number and email address. BD, in its sole discretion, may (i) reject any request by such third party for BD to provide goods and services associated with the Hardware, including consumables, reagents, spare parts, training, support and maintenance; (ii) void all Hardware warranties; and (iii) require that the third party compensate BD for all goods and services necessary to restore the Hardware to BD’s designated standards. Accordingly, Customer agrees to (1) inform the third party that BD has no obligation to provide any goods or services to the third party with respect to the Hardware, and all Hardware warranties hereunder are nontransferable and do not extend to the third party; and (2) require the third party to inform any other party that may subsequently purchase the Hardware of the resale restrictions of this Section.

4. **Consumable Purchase/Lease Shortfall.** As applicable, on a periodic basis BD will reconcile the purchases made by Customer to any Purchase Commitments or the Lease or Rental payments paid in a Customer Order/Product Addendum. If Customer’s purchases or payments fail to meet the Purchase Commitment or Lease or Rental payment schedule as provided in a Customer Order/Product Addendum, BD may, in its discretion, exercise any remedies provided in the Customer Order/Product Addendum.

#### C. RENTAL TERMS.

1. Except as set forth in a Customer Order/Product Addendum, (i) title will not transfer to Customer at the end of the Rental Term, (ii) the initial term for Rental Equipment will begin on the date stated in the applicable Implementation Timeline and will continue for the number of months stated in the applicable Customer Order/Product Addendum, provided that, if not stated, then the first day of the month following the date of Acceptance of such Hardware; (iii) and Rental Equipment is personal property for all purposes.

2. Customer will not allow Rental Equipment to become a fixture of real property. Customer will reimburse BD for any personal property tax imposed on BD as the lessor of Hardware.

3. Customer will keep and use Rental Equipment only at the delivery address set forth in the Customer Order/Product Addendum and will not move it without BD’s prior written consent. Customer will keep Rental Equipment in good condition and working order, and will allow BD to make engineering changes and software updates upon reasonable request. Customer will keep all Rental Equipment free and clear of all liens, adverse claims, and encumbrances.

4. If Customer relinquishes possession of any Rental Equipment for any reason (including at the end of the term), then Customer will: 1) promptly remove all medications (if any), data, and Customer property from such Hardware without damaging such Rental Equipment, and 2) acknowledge receipt of any data device that BD removes from Rental Equipment and tenders to Customer, and 3) promptly and properly crate and ship such Rental Equipment to BD.

5. Certain BD Pyxis™ Products are subject to additional terms and conditions (including the Footprint Modification Option) set forth in the separate Schedule applicable to the rental of BD Pyxis Products.

**D. TITLE, MAINTENANCE AND RISK OF LOSS.** Title to the Hardware will remain with BD at all times until payment of the purchase price, if any, and shall remain with BD indefinitely in cases where the Customer Order/Product Addendum calls for a Lease or Rental. In the case of a Lease or Rental, Customer agrees to maintain the Hardware in accordance with the Documentation and Customer shall bear all risk of loss and damage with respect to the Hardware for any cause from delivery of the Hardware until such Hardware is returned to BD. If any of the Hardware is damaged or destroyed while in Customer’s possession, Customer shall promptly notify BD and the repair or replacement of such Hardware shall be at Customer’s expense.

### II. SERVICE AND SUPPORT TERMS AND CONDITIONS

**A. Service and Support.** BD shall provide Support and Services in accordance with the descriptions and conditions for those services stated in the Customer Order/Product Addendum. BD shall provide Support during the applicable Warranty Period or Customer Order/Product Addendum Term, as applicable, subject to Customer’s payment of the applicable fees. Only BD’s designated service technicians may service, perform maintenance that is not expressly required to be performed by Customer or repair the Hardware. If purchased in connection with a service plan, BD will perform routine service consistent with the terms of the service plan. After termination of any Warranty or service plan, Customer shall be responsible for charges on a time and material basis for service activities. Customer shall promptly inform BD in the event Support is required or advisable with respect to the Hardware. For Customer Order/Product Addendums for Support, including enhanced support or extended warranties, terminated by Customer prior to the end of the Customer Order/Product Addendum Term relevant to such Support, BD may invoice



Customer for any unpaid balance. Support is not assignable by Customer and shall not pass to the benefit of any eventual transferee of the Hardware from Customer. Customer shall cooperate with BD in providing Support, including by ensuring that the applicable elements of Technology Environment meet and are maintained to the standard set forth in the system requirements specified in the applicable Documentation. In the event the Technology Environment does not meet the aforementioned standards, BD may refuse installation until such time the Technology Environment is compliant. For the avoidance of doubt, BD has no obligation to maintain, repair or replace any element of the Technology Environment. If Customer at any time fails to pay any fees for either Service or Support, as applicable, and does not dispute the fees reasonably and in good faith, then, on not less than 10 days' notice, BD may cease providing such Service or Support, and cease providing any or all Service or Support, as applicable, to any or all entities listed on **Schedule A**, for so long as the fees remain unpaid.

- B. Service Parts.** BD will provide all parts required to perform Support, excluding consumables, where on-site part inventory is initially supplied as part of the Support offering. All parts must be returned to BD, unless BD, in its sole discretion, agrees otherwise. The use of new or like-new parts will be at the sole discretion of BD. BD is not obligated to provide parts for spares or inventory or service on any such parts.
- C. Software Revisions.** A charge may apply for Upgrades. Updates, Upgrades and any other revisions to third party software are not provided by BD. Customer must remain within the last two software versions to continue to receive Support. In the event hardware is required to be upgraded to support the installation of Updates and Upgrades, the Customer shall be responsible for the purchase of such hardware.
- D. Shipping & Handling of Parts.** Shipping and handling charges for standard next day delivery of replacement parts that are covered under warranty or Customer Order/Product Addendums will be at no additional charge to Customer. Shipping and handling charges for Consumables and priority/rush delivery parts shipments are specifically excluded and will be billed to Customer at the then-current rate.
- E. Customer Responsibilities.**
  - 1. Proper Environment.** Customer shall be responsible for providing and maintaining the environment in accordance with the applicable requirements in the Documentation.
  - 2. Operating System Security.** Customer shall maintain virus and malware protection and operating system security updates to network connected computing systems which run Software Products and for backing up any information generated by the Hardware.
  - 3. Safe Work Environment.** BD will not perform any Services or Support in an unsafe work environment, and BD reserves the right to refuse such Service and/or Support until it determines, in its sole and reasonable discretion, that Customer's work environment is safe.
  - 4. Preventative Maintenance Availability.** Except for circumstances beyond the reasonable control of Customer, if the Hardware is not available for scheduled preventative maintenance in a 60 day period from the initial planned service date, BD will not be required to perform such service during the applicable preventive maintenance period and Customer shall not be entitled to any pro-ration of the cost of its service plan, other remedy or compensation.
  - 5. Customer Information System.** If applicable, Customer shall provide accessibility to connect the Customer's Laboratory Information System ("LIS") and will be limited to a one-time on-site connection ("LIS Connection"). Any such LIS Connection shall be performed at the time of installation of the Hardware. Customer will ensure availability of the LIS Vendor at time of the LIS Connection. Optional services for an additional fee are available for connectivity to new or upgraded systems post initial installation of the Hardware.
  - 6. Remote Support Service.** For Remote Support Service, Customer shall provide high-speed internet access and firewall modifications to enable connectivity, if applicable, and if Customer's system, connectivity, or personnel prevent BD from performing RSS on the Hardware, then: (i) any guaranteed response time or uptime applicable to that service plan will be void; and (ii) Customer will be billed at BD's then prevailing rate for parts, labor, material and travel, for any onsite services. RSS is required to provide support for security patches and assistance with cybersecurity incident response. If Customer chooses not to allow RSS to connect, security patch management and cybersecurity incident response will be the sole responsibility of Customer.
  - 7. Maintenance Inspection.** If the Hardware has not been covered by a warranty or maintenance contract with BD for three or more months prior to the start of the Customer Order/Product Addendum Term, an inspection may be required to ensure that the Hardware meets BD acceptability standards. This inspection, as well as any repairs required, will be charged at BD's then prevailing rate for parts, labor, material and travel.
- F. Exclusions.** The following items and/or services are not included as part of Support. Services performed by BD on the Product made necessary as a result of any of the following shall be billed to the Customer at BD's then prevailing rate for parts, labor, material, and travel.
  - 1. Consumable items (except as may be provided in preventative maintenance kits as applicable).
  - 2. Service relating to decontamination, removal of inhibition matter, damage caused to the Hardware or any part thereof by accident, the elements, power anomaly, acts of God, alteration, misuse or abuse, relocation or reinstallation of Hardware.
  - 3. Services performed by BD on a weekend or BD designated holiday, unless otherwise indicated in the Customer Order/Product Addendum (such Support are subject to availability and will be billed at weekend/holiday rates).
  - 4. Service on computers, workstations, printers, or other items not listed as Hardware hereunder, non-BD supplied workstations, or uninterrupted power supply unless otherwise indicated in the Customer Order/Product Addendum.
  - 5. Service relating to a failure to comply with Section II.E (Customer Responsibilities) or any damage to the Hardware resulting from Customer's negligence.
  - 6. Optional services, which may be available to purchase by the Customer for an additional fee. Optional services may include, but are not limited to, extended hours of coverage, relocation of instruments and peripherals, educational seminars, BD facility training courses, LIS connectivity and preventative maintenance. Optional services are not a part of the warranty or service plan and will be billed at BD's then prevailing rate for parts, labor, material and travel.
  - 7. Damage caused by viruses introduced by Customer.



**G. Implementation Services.** Subject to additional terms with respect to the implementation of MMS Products that are set forth in the applicable Schedules included in this Standard Agreement, Products will be implemented as provided in the Customer Order/Product Addendum, which will describe details that may include distinct stages, each with well-defined scope, responsibilities, activities, and deliverables. Each Party shall use reasonable efforts to comply with applicable policies (including reasonable security rules, policies and procedures provided in writing and agreed to in advance, fulfill its responsibilities, conduct its activities, and provide its deliverables as specified in the Implementation Timeline. Customer shall reasonably cooperate with BD in its performance of Implementation Services, including providing any resources, Technology Environment, and physical environment (with all necessary permits and free of obstructions) specified in the Documentation. Upon completion of the Implementation Services, Customer will provide BD with written acknowledgment of completion.

### III. SOFTWARE TERMS AND CONDITIONS

- A. Software License.** Subject to the terms of the applicable Customer Order/Product Addendum, BD hereby grants Customer a non-exclusive, non-transferable, non-sublicensable, revocable, limited license during the Customer Order/Product Addendum Term, to use the Software and/or Hosted Software, as applicable, solely in connection with Hardware purchased/leased under the Customer Order/Product Addendum and only in conjunction with the ordinary course of Customer's internal business, provided that all licensing of Third Party Software will be subject to the terms of the Third Party Software Schedule. MMS Products are subject to the specific License terms set forth in the applicable Schedules attached hereto. Customer receives no title or ownership rights to the Software. BD shall deliver to Customer Software in executable object code form and deliver or otherwise make the applicable Documentation available to Customer. Upon the expiration or termination for any reason of an applicable Customer Order/Product Addendum, Customer will immediately discontinue use of the Software and/or Hosted Software and provide physical or remote access to BD to uninstall the Software and/or Hosted Software from all Customer systems, and return all copies of Documentation to BD. Any continued use of the Software and/or Hosted Software by Customer in violation of the Customer Order/Product Addendum is at Customer's own risk.
- B. Hosted Software.** BD shall provide Customer with the protocols or keys or other instructions needed to access Hosted Software purchased under the Customer Order/Product Addendum and deliver or otherwise make the applicable Documentation available to Customer. Subject to the terms of the Customer Order/Product Addendum, during the Customer Order/Product Addendum Term, Customer may access and use, and may permit Users to access and use, the Hosted Software and the applicable Documentation in the ordinary course of Customer's business. From time to time, BD may add, modify, discontinue, condition the use of, and otherwise change elements of Hosted Software, but will not materially lessen core features or functions.
- C. Restrictions.** Customer shall not, and shall not permit any User to: (i) circumvent or bypass any technological protection measures in or relating to a Product; (ii) decompile, disassemble, decrypt, hack, emulate, exploit, or reverse engineer or otherwise attempt to obtain or perceive the source code of Software; (iii) modify or create any derivative work from Software or Documentation; (iv) copy, publish, display, perform, transfer, rent, sublicense, lease, sell, assign, pledge, encumber, export, import, distribute, or lend Software or Documentation; (v) enable access to Software by a third party software application, except as expressly authorized by BD in writing; (vi) remove, alter or obscure any proprietary notice or legend from a Product or Documentation; (vii) permit use of a Product by any person not qualified or not authorized to do so; or (viii) use a Product in or for any manner or purpose that infringes, misappropriates, or otherwise violates any right of any third party or that violates any law or regulation.
- D. Data Security; Privacy.** Customer represents, warrants, and covenants that (1) Customer's use of the Hardware does not and will not invade or violate privacy, personal or proprietary rights, or other common law or statutory right of any third party, (2) Customer has implemented reasonable and appropriate safeguards to protect data, programs and systems associated with the Products in accordance with legal requirements and industry standards, including appropriate physical safeguards, and (3) Customer shall not upload any content that contains software viruses or is designed to interrupt, destroy, or limit the functionality of any Products, or that contains other harmful, disruptive, or destructive files or content. BD incorporates a patch management program where security patch validations are performed quarterly and released annually for select BD manufactured Hardware. Deployment of software patches are product dependent and may be deployed remotely or onsite by a field service engineer. Customer shall maintain the privacy and confidentiality of Healthcare Data and comply with Applicable Laws governing privacy of Healthcare Data (including PHI), and for conducting and maintaining timely backup procedures to protect Healthcare Data from loss or corruption. BD is not responsible for any archival, backup or disaster recovery services with respect to Healthcare Data. No data generated, hosted or stored by or through a Product or BD is or should be considered an electronic medical record. Customer is responsible for printing or storing any data as may be necessary or appropriate to include in any medical record maintained by Customer.
- E. Customer Obligations.** Customer will ensure that its Technology Environment meets the system requirements specified in the applicable Documentation. Customer will perform manufacturer recommended maintenance and patching for all elements of its Technology Environment and maintain all hardware and software of its Technology Environment at the version levels specified by BD in writing.
- F. Customer Data.** BD and Customer acknowledge and agree that Data from Products and from Customer's third-party medical devices and health information technologies are essential to BD's delivery of Products. The Parties agree that Customer shall own Healthcare Data and BD shall own Products Data and Analytics Data. Customer hereby authorizes BD to access and use such Healthcare Data, separately or aggregated with other data: (i) to provide Products, Support, Service, Remote Support Service, Updates, and Implementation Services under the Customer Order/Product Addendum; (ii) for Product Development to improve the delivery, quality, or safety of healthcare; (iii) for Evidence Generation; and, (iv) for Customer Needs Identification. Customer hereby grants BD a perpetual irrevocable worldwide right to access and use Healthcare Data for any lawful use, provided however BD shall not sell PHI or Healthcare Data. BD hereby grants Customer a perpetual irrevocable worldwide right to Analytics Data for patient care. If Healthcare Data contains Protected Health Information as defined by 45 CFR §160.103, then BD will use such Healthcare Data in conformance with the Privacy Rule and, before disclosing such Healthcare Data, deidentify such Healthcare Data pursuant to 45 C.F.R. § 164.514. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- G. U.S. Government.** The Software, Hosted Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software, Hosted Software and Documentation by the United States Government will be governed solely by the terms of the Customer Order/Product Addendum and will be prohibited except to the extent expressly permitted by the terms of the Customer Order/Product Addendum.



#### IV. WARRANTIES AND DISCLAIMERS

- A. Support and Parts Warranties.** Subject to the disclaimers, limitation of liability and other terms related to warranties contained in the Standard Agreement, BD represents and warrants that its employees have the skills and qualifications necessary to perform services under the Customer Order/Product Addendum in a professional manner in accordance with the generally accepted industry standards. All parts supplied by BD during the applicable Warranty Period or under a Customer Order/Product Addendum are warranted against defects in material and workmanship until the expiration date of the Customer Order/Product Addendum Term or 90 days, whichever is longer. BD's sole liability, and Customer's sole and exclusive remedy, under these limited service warranties shall be to repair or replace parts found to be defective, and to correct any service not performed in accordance with the Customer Order/Product Addendum.
- B. Software/Hosted Software.** Except as set expressly forth in Customer Order/Product Addendum, all Software and Hosted Software are provided "as is," "with all faults," and "as available." BD does not warrant that the Software and Hosted Software are error-free or that defects will be corrected or will operate without interruption, or that future operation will be compatible with current operation or applications. BD makes no warranties that the Software and Hosted Software will be free from loss, interruption, corruption, attack, viruses, interference, hacking or other security intrusion, and BD disclaims any liability relating thereto. BD does not warrant that the Software and Hosted Software will work in all combinations selected by the Customer or that the Software will meet the requirements of the Customer. BD's express warranties will not be enlarged, diminished or affected by, and no obligation or liability will arise out of BD's rendering technical or other advice or service in connection with the Software and Hosted Software. Without limiting the foregoing, BD disclaims all warranties whatsoever (including but not limited to any express warranties) with respect to any third party or Customer software, whether or not specifically recommended by BD or interoperating with the Software and Hosted Software, including Customer-sourced hardware.
- C. Data Transfer.** With regard to any transfer of data or information to or from the Products over the Internet, Customer acknowledges that although BD uses data integrity and secure Internet connection technology that are generally regarded to be reliable, no system can perfectly guard against risks of intentional intrusion or inadvertent disclosure of information. When using the features of the Products that involve the transfer of data and information over the Internet, such data and information will be transmitted over a medium that is beyond the control of BD, its contractors and agents. Customer hereby expressly assumes the sole risk of any unauthorized disclosure or intentional intrusion, or of any delay, failure, interruption, or corruption of data or other information transmitted in connection with the use of the services, including any such occurrence that might result from viruses, malware, spyware or other malicious software whether such malicious software resides on Customer's computer or the Products.



## SCHEDULE C: THIRD PARTY SOFTWARE

This Third Party Software Schedule governs Customer's access to and use of Third Party Software. Customer's right to use such Third Party Software, and the Software, Hosted Software and Hardware that contain them, is subject to compliance with the Customer Order/Product Addendum entered between the Parties and these terms. In the event of any conflict between these terms and those of any end user license agreement that may be presented in electronic form during use of the Third Party Software, these terms shall take precedence.

1. **Ownership.** Third Party Software is licensed, not sold, by BD to Customer. All title and intellectual property rights in and to Third Party Software (including, but not limited to, code sequence, logic, structure and screens) and documentation, and in and to any improvements, enhancements, updates, or upgrades thereto, including concepts and technology inherent in Third Party Software, are and at all times shall remain, the sole and exclusive property of a third party and/or its affiliates ("**Third Party**"). Third Party Software is protected by copyright laws as well as other intellectual property laws and treaties. Customer's possession, use, or access to Third Party Software does not transfer any ownership of Third Party Software nor any intellectual property rights to Customer. All rights not expressly granted under this Schedule are reserved by BD or Third Party. Nothing contained in this Schedule shall be construed directly or indirectly to assign or grant to Customer any right, title or interest in or to trademarks, service marks, copyrights, patents, or trade secrets of Third Party, or any ownership rights in or to the Third Party Software.
  2. **Use.** Customer may use Third Party Software only in conjunction with Software and Hardware provided to Customer by BD, and not as a stand-alone product. The license granted herein does not include a license to use the Third Party Software for development, testing or support purposes.
  3. **Copies.** Customer may not make any copies of Third Party Software for any purpose unless expressly authorized by BD. Customer must erase or destroy all Third Party Software upon notice from BD.
  4. **Restrictions.** Except as permitted by Applicable Laws, Customer shall not:
    - a. work around any technical limitations in Third Party Software;
    - b. reverse engineer, de-compile, translate, disassemble or otherwise attempt to derive source code from the Third Party Software, in whole or in part;
    - c. allow access or permit use of the Third Party Software by any User other than that permitted by BD in Customer's license agreement with BD;
    - d. modify or create derivative works based upon Third Party Software;
    - e. publish Third Party Software, or post any portion of it on public bulletin boards, websites, Internet domains, or online chat rooms;
    - f. sell, rent, lease, lend, license, sublicense or otherwise transfer, in whole or in part, Third Party Software or related documentation to any third party;
    - g. use Third Party Software in connection with, through or to an application service provider, or using other similar network hosting methods; or
    - h. alter, remove or destroy and will take commercially reasonable steps to prevent the alteration, removal or destruction of, any Third Party copyright notice, trade secret or other proprietary rights notice from Third Party Software.
- For the Software, including the Third Party Software, Customer shall provide the same level of security for Third Party Software as it provides for its own products, but in no event less than reasonable care, to prevent third parties from performing such activities.
5. **Internet-Based Services.** Third Party Software may contain components that enable and facilitate the use of certain internet-based services. Customer acknowledges and agrees that Third Party may automatically check the version of Third Party Software and/or its components that Customer is using and may provide Updates or supplements to Third Party Software which may be automatically downloaded. No personally-identifiable information will be obtained through these services.
  6. **No Warranties.** THIRD PARTY SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. BD AND THIRD PARTY EXCLUDE AND DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
  7. **Liability Limitations.** Customer agrees that, regardless of the form of any claim, neither BD nor Third Party has any liability for damages, whether direct, consequential, special, punitive, indirect or incidental, for anything related to Third Party Software. This limitation also applies even if BD or Third Party should have been aware of the possibility of damages.
  8. **Termination.** Without prejudice to any other rights, BD may terminate this license to use Third Party Software if Customer fails to comply with the terms of this Schedule.
  9. **Export Restrictions.** Third Party Software is subject to United States export laws and regulations. Customer must comply with all applicable domestic and international export laws and regulations, including restrictions on destinations, end users and end use.
  10. **U.S. Government Use.** Third Party Software is a "commercial component" consisting of "commercial computer software" and "commercial computer software documentation," as such terms are defined in Title 48 of the Code of Federal Regulations. Any use of Third Party Software by the U.S. Government shall be subject to the terms of BD's applicable Government FSS agreement.
  11. **End User License Agreements.** It is the responsibility of Customer to register all third party products and software with the third party for purposes of warranty and end user license agreement ("**EULA**").

## SCHEDULE D: BUSINESS ASSOCIATE AGREEMENT

In the performance of one or more support agreements between BD (“**Business Associate**”) and Customer (“**Covered Entity**”) related to the collection of data (each, a “**Data-Related Agreement**”), Business Associate will receive protected health information, as defined by 45 C.F.R. §160.103, from or on behalf of Covered Entity (collectively, “**PHI**”). The purpose of this Schedule is to permit Business Associate and Covered Entity to comply with the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E (“**Privacy Rule**”), the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and C (“**Security Rule**”), the HIPAA Omnibus Rule at 45 C.F.R. part 160 and 45 C.F.R. part 164 (“**Omnibus Rule**”), and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) (the “**HITECH Act**”). (Collectively referred to herein as the “**HIPAA Rules**”)

### Definitions

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms in 45 C.F.R. §§160.103, 164.304, 164.402 and 164.501, unless otherwise indicated.

### Schedule

- 1. Permitted Uses and Disclosures of PHI.** Business Associate shall not use or further disclose PHI except: (a) other than as permitted or required by this Schedule; (b) as “**Required By Law**,” as that phrase is defined in 45 C.F.R. §164.103; or (c) except as otherwise expressly agreed to in writing by Covered Entity. Except as otherwise limited in this Schedule, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Customer pursuant to the Data-Related Agreements, provided that to the extent Business Associate carries out any of Covered Entity’s obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of its obligations.
- 2. Minimum Necessary.** In conducting functions and/or activities under the Data-Related Agreements and this Schedule that involve the use and/or disclosure of PHI, Business Associate shall make reasonable efforts to limit the use and/or disclosure of PHI to the minimum amount of information necessary to accomplish the intended purpose of the use or disclosure.
- 3. Protection of PHI.** Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Schedule.
- 4. Reporting.** Business Associate shall promptly report to Covered Entity any Breach or successful Security Incident as required by 45 CFR §164.410.
- 5. Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Schedule.
- 6. Subcontractors and Agents.** Business Associate agrees to ensure that any subcontractors and agents to whom it provides PHI received from, or created, or received by, Business Associate on behalf of Covered Entity agree in writing to the same restrictions and conditions set forth in the business associate provisions of the HIPAA Rules that apply through this Schedule to Business Associate with respect to such information in accordance with 45 C.F.R. §164.504(e)(2)(ii)(D).
- 7. Accounting to HHS.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services (the “**Secretary**”), in a time and manner designated by Covered Entity or the Secretary, for the purpose of the Secretary determining Covered Entity’s compliance with the HIPAA Rules.
- 8. Documentation of Disclosures.** Business Associate shall document and maintain documentation of such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- 9. Accounting of Disclosures.** If Covered Entity receives a request from an individual pursuant to 45 C.F.R. §164.528 for an accounting of Covered Entity’s disclosures of the individual’s PHI and, in the course of attempting to satisfy the individual’s request, Covered Entity provides a written request to Business Associate, then Business Associate shall promptly provide Covered Entity the information required to be included in an accounting pursuant to 45 C.F.R. §164.528(b)(2) for Business Associate’s disclosures of PHI that are subject to an accounting pursuant to 45 C.F.R. §164.528(a)(1).
- 10. Access and Designated Record Set.** To the extent Business Associate maintains PHI in a “**Designated Record Set**,” as that term is defined by 45 C.F.R. §164.501, Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to PHI in a Designated Record Set to Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. §165.524. If applicable, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity and in a reasonable time and manner.
- 11. De-identification of PHI.** Business Associate may de-identify PHI pursuant to 45 C.F.R. §164.514 and use the de-identified information for any lawful purpose. Business Associate’s use and disclosure of such de-identified personal information will not be subject to the requirements set forth in this Schedule.
- 12. Data Aggregation.** If Business Associate provides data aggregation services to Covered Entity, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).
- 13. Right to Terminate for Material Breach.** If Business Associate is in material breach of this Schedule and does not cure the breach within a reasonable time (not to exceed thirty (30) days), then Covered Entity may terminate this Schedule and the applicable Data-Related Agreement that granted Business Associate access to PHI which gave rise to the breach. Termination of a Data-Related Agreement pursuant to this Section shall have no effect upon any right or obligation created by any other written agreement between Business Associate and Covered Entity, except as otherwise provided herein.
- 14. Return or Destruction of PHI.** Upon termination of this Schedule or any Data-Related Agreement for any reason, Business Associate shall either return or destroy, if feasible, all PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity. This provision shall apply to all such PHI in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. If Business Associate determines that returning or destroying the PHI is infeasible, then Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Schedule to such PHI and limit further uses and disclosures of such PHI to those purposes that makes the return or destruction infeasible, for so long as Business Associate maintains the PHI.

- 15. Electronic PHI Safeguards.** To the extent Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity, Business Associate shall comply with the Security Rule and shall:
- (a) implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, in accordance with the Security Rule; and
  - (b) ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits Electronic PHI on Business Associate's behalf will (i) implement reasonable and appropriate safeguards to protect Electronic PHI; and (ii) comply with any applicable requirement of the Security Rule.
- 16. Conformance with Modification of HIPAA Rules or Regulations.** If an amendment to or modification of HIPAA Rule, requires modification of this Schedule to permit Covered Entity or Business Associate to remain in compliance during the term of this Schedule, then Business Associate and Covered Entity shall enter into good faith negotiations to amend this Schedule to conform to any change required by such amendment or modification. Notwithstanding the foregoing, if Covered Entity and Business Associate have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations.
- 17. Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with HIPAA Rules.
- 18. No Third Party Beneficiaries.** No provision of this Schedule is intended to nor shall any provision confer any right, remedy, obligation or liability upon any person or entity other than the parties and their respective permitted successors or assigns.
- 19. Term.** The Term of this Agreement shall begin on the Effective Date and shall continue until later of termination in accordance with Section 13 of this Schedule or until the final Data-Related Agreement between Covered Entity and Business Associate has terminated and all PHI is destroyed or returned to Covered Entity.
- 20. Survival.** The obligations of Business Associate pursuant to this Schedule shall survive the termination, cancellation or expiration of any Data-Related Agreement.
- 21. Primacy.** To the extent that any provisions of this Schedule conflict with the provisions of any other agreement or understanding between Business Associate and Covered Entity, this Schedule shall control with regard to the subject matter of this Schedule.
- 22. Independent Contractors.** No provision of this Schedule is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between Covered Entity and Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Schedule. None of the parties nor any of their respective representatives shall be construed to be the agent, employer or representative of the other. The parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency, and it is not the intention of either Business Associate or Covered Entity that Business Associate constitute an "agent" under such common law.

## SCHEDULE E

### TERMS AND CONDITIONS FOR THE RENTAL OF BD PYXIS™ PRODUCTS

The terms of this Schedule (“**Pyxis Rental Terms Schedule**”), in addition to the applicable terms and conditions of the Standard Agreement and any other Schedules attached thereto, apply to Customer’s rental of BD Pyxis™ products that are Rental Equipment (“**Pyxis Rental Equipment**”) pursuant to applicable Customer Orders between the Parties. Unless otherwise defined in this Schedule, capitalized terms herein will have the same meaning as ascribed to such term under the Standard Agreement

**1. Initial Rental Term; Month-to-Month Rental Term.** The “**Initial Rental Term**” for Pyxis Rental Equipment means the number of months stated in the applicable Customer Order, beginning on the applicable Term Begin Date (as such term is defined in **Schedule F: BD Pyxis Implementation Terms**). Unless a Party provides sixty (60) days’ prior written notice of its intention not to extend the Initial Rental Term, the Rental Term will continue on a month-to-month basis (“**Month-to-Month Rental Term**”) at the applicable Rental Fee stated in the then-current BD Pyxis™ products price catalog. Either Party may terminate the Month-to-Month Rental Term upon thirty (30) days’ prior written notice.

**2. Footprint Modification Option.** Customer will have the right and option to terminate the Rental Term for a subset of Pyxis Rental Equipment under a Customer Order, as provided in this **Section 2**.

**2.1** As used herein, (i) “**FMO Products**” means Pyxis Rental Equipment and Software (other than third party Products provided by BD or Third Party Software) under a Customer Order representing up to twenty percent (20%) of the total Rental Fees and Subscription Fees for all Pyxis Rental Equipment and Software under such Customer Order as evaluated in each Contract Year; and (ii) “**Contract Year**” means the twelve (12) month period beginning on any anniversary of the Effective Date of the Standard Agreement.

**2.2** Provided that Customer is not then in breach of any agreement with BD, Customer may terminate the Rental Term or Subscription Term for the FMO Products any time during a Contract Year with at least ninety (90) days prior written notice to BD. Termination shall be subject to Customer’s execution of BD’s standard form amendment to the Customer Order, and Customer’s compliance with the terms thereof, including, without limitation, return of the FMO Products at Customer’s expense. Termination shall be effective the first day of the month following the date BD takes possession of the FMO Products. On the effective date of termination, the Rental, Support and/or Subscription Terms and Customer’s obligation to pay Rental Fees, Monthly Support Fees, and/or Subscription Fees for the FMO Products will terminate.

**2.3** For the sake of clarity, the foregoing right and option will not apply to (i) any Products other than the FMO Products, (ii) any “sold-to” or “ship-to” entity other than the entity designated in the applicable Customer Order, (iii) any third party Product provided by BD or Third Party Software listed in the Customer Order, and will not (iv) carry over to a subsequent Contract Year.

**3. Rental Fees.** In accordance with **Section I.F.2 (Payment Terms)** of the General Terms and Conditions of the Standard Agreement, Customer will pay the Rental Fees stated in the applicable Customer Order for each unit of Pyxis Rental Equipment on the first day of each month during the Rental Term, which obligation is unconditional and non-cancelable, except as otherwise stated herein. Customer is not entitled to abate or reduce any Rental Fee for any reason. Customer will pay the Rental Fee when due regardless of any existing or future setoff or claim that Customer may assert. Additionally, Customer will not assert any setoff or counterclaim against a BD assignee if such assignee commences an action to collect any amount due under the applicable Customer Order.

**4. All Risk Property Insurance.** Customer will obtain and maintain throughout the Rental Term All Risk Property Insurance in an amount equal to the full replacement value for the Pyxis Rental Equipment. Customer will notify CareFusion immediately of any loss or damage to the Pyxis Rental Equipment, and will continue to pay the applicable Rental Fee; provided, however, that BD will reasonably cooperate with Customer and Customer’s insurer to promptly provide replacement Pyxis Rental Equipment, subject to **Section 7 (Exclusions)** of the Pyxis Support Terms Schedule included in the Standard Agreement as **Schedule G**.

**5. Assignment of Payment Obligations.** Notwithstanding the non-assignment language in the General Terms and Conditions of the Standard Agreement, BD may assign, transfer, grant a security interest in, or sell some or all of BD’s right to receive payments under a Customer Order without Customer’s consent (an “**Assignment of Payment Obligations**”). Upon an Assignment of Payment Obligations: (i) Customer will not hold any BD assignee liable for any BD obligation under the applicable Customer Order; (ii) the rights of such assignee will not be subject to any claims, counterclaims, defenses or setoffs of any kind whatsoever; (iii) Customer will cooperate with and consent to an Assignment of Payment Obligations by executing and delivering documents and assurances that BD or its assignee reasonably requests; (iv) Customer will, if requested, make payments due under the applicable Customer Order directly to such assignee; and (v) all of Customer’s obligations will inure to the benefit of such assignee as well as to BD, and may be enforced by such assignee in its own name or by BD.



## SCHEDULE F:

### TERMS AND CONDITIONS FOR IMPLEMENTATION OF BD PYXIS™ PRODUCTS

These terms apply to implementation services for BD Pyxis™ Equipment and BD Pyxis Software Products (collectively, “**Pyxis Products**”) provided by BD to Customer pursuant to applicable Customer Orders between the Parties. Unless otherwise defined in this Schedule, capitalized terms herein will have the same meaning as ascribed to such term under the Standard Agreement.

**A. Implementation Terms.** The terms and conditions of this Schedule, together with the Implementation Timeline attached to a Customer Order, describe the process, tasks, responsibilities, completion criteria and deliverables for the Pyxis Products implementation project (“**Project**”).

- 1. Overall Project.** The Project consists of the installation of the Pyxis Products at Customer’s site(s).
- 2. Project Resources.** BD and Customer agree to provide qualified resources throughout the duration of the Project.

**B. Implementation Fees.** To the extent applicable, any implementation fees set forth in the applicable Customer Order will be invoiced within thirty (30) days from the Term Begin Date (defined below) set forth in the applicable Implementation Timeline.

**C. Implementation Activities.** The Project will be completed in stages as set forth in the applicable Implementation Timeline. If a Customer Order contains multiple product lines, then separate Implementation Timelines may be included for each product line, as necessary. BD and Customer will complete any applicable technical, infrastructure, and workflow assessment (“**Implementation Assessment**”) at Customer’s site(s), providing the basis for the implementation activities set forth herein and in each Implementation Timeline (“**Implementation Activities**”). BD and Customer shall use commercially reasonable efforts to complete the Implementation Activities on or before the applicable “Completion Date(s)” set forth in the Implementation Timeline(s).

**D. Medication Handling.** BD employees and agents (“**BD Personnel**”) shall not handle Customer’s medications. Customer must be physically present and capable of observing BD Personnel during any implementation activity in which BD Personnel have access to Customer’s medications. If Customer fails to do so, then BD may re-schedule that activity and, upon invoice, Customer will reimburse BD for expenses related to re-scheduling that activity.

**E. Term Begin Date.**

- 1.** The “**Term Begin Date**” is a mutually agreed upon date set forth in the Implementation Timeline, provided that if no Term Begin Date is set forth in an Implementation Timeline or if there is no Implementation Timeline, then the “Term Begin Date” shall be the first date of the month following the Acceptance of the Pyxis Products. If the Customer Order is for the rental of Pyxis Products, then the Rental Term for each Pyxis Product shall begin on the Term Begin Date. If the Customer Order is for the purchase of Pyxis Products, then the invoice for the Net Purchase Price for each Pyxis Product will be provided no later than the first day of the month following the date of Acceptance or on the applicable Term Begin Date, whichever comes first, and Customer will pay the Net Purchase Price in accordance with the payment terms of the Standard Agreement. If, due to the sole fault of BD, a Pyxis Product is not Accepted (as such term is defined in **Section C (Acceptance of Delivery; Use)** of the General Terms and Conditions of the Standard Agreement) until after the Term Begin Date, then the Term Begin Date shall be the first day of the month following the date the Pyxis Product is Accepted. The Term Begin Date shall be no later than three (3) months after the “Completion Date” for the last milestone event stated on the applicable Implementation Timeline.
- 2.** Notwithstanding the foregoing, if a Pyxis Product is not Accepted by the Term Begin Date for any reason that, in BD’s reasonable discretion, is not the sole fault of BD (each, a “**Delayed Product**”), then Customer is nonetheless obligated to pay the applicable rental or purchase fee(s) on the Term Begin Date; provided, however, that if a Delayed Product has not been delivered or installed, then Customer may exchange the Delayed Product for an alternate BD Pyxis™ product (“**Alternate Product**”) of equal or greater value as determined under the then-current BD Pyxis™ product price catalog, subject to the following: (a) if the rental or purchase fee(s) applicable to the Alternate Product is greater than the fee(s) for the Delayed Product, then Customer will pay the difference in such fees in accordance with the terms of the applicable Customer Order; (b) Customer will pay any applicable transaction fees, including, without limitation, BD’s costs of manufacturing, shipping and freight; and (c) if the Delayed Product has not been delivered to Customer, BD may, at its sole option, cancel the Customer Order for that Pyxis Product.
- 3.** If previously installed BD Pyxis™ products are being upgraded or subject to new terms and conditions, then the previously-applicable terms and conditions, including payment terms, for those products shall remain in full force and effect until the Term Begin Date for the Pyxis Products under the new Customer Order, unless otherwise agreed to in writing by the Parties.

**F. Conditions.** The Completion Dates set forth in an Implementation Timeline are contingent upon BD’s timely receipt of all properly executed contract documents from Customer prior to the applicable Completion Date and the provision of adequate Customer resources as outlined herein. If Customer fails to provide access or otherwise prevents BD from conducting an Implementation Activity, then (i) BD may adjust affected deadlines and re-schedule the activity, and (ii) Customer shall reimburse BD for reasonable expenses incurred due to re-scheduling.

**G. Subcontractors.** CareFusion may, in its sole discretion, engage one or more subcontractors to perform any of its duties, including without limitation, implementation activities, training and support, provided that CareFusion will remain responsible for any such subcontractor’s performance.

**SCHEDULE G:**  
**TERMS AND CONDITIONS FOR SUPPORT OF BD PYXIS™ PRODUCTS**  
**FOR**  
**COMPREHENSIVE, ENHANCED AND PREMIER SUPPORT PLANS**

The terms and conditions of this Schedule (the, "**Pyxis Support Terms Schedule**"), in addition to the applicable provisions of the Standard Agreement, apply to Support for MMS Products that are BD Pyxis™ MedStation™ ES System, BD Pyxis™ Anesthesia Station ES, BD Pyxis™ SupplyStation™, BD Pyxis™ CII Safe, and BD Pyxis™ Logistics products (collectively, "**Pyxis Products**"), as set forth in the applicable Customer Order. The Customer Order identifies the applicable Support Plan (*Comprehensive, Enhanced, or Premier*) (each, a "**Support Plan**"). Each Party's responsibilities for Support of the Pyxis Products will vary according to the applicable Support Plan, subject to the terms herein. Unless otherwise defined in this Schedule, capitalized terms in this Schedule will have the same meaning as ascribed to such term under the Standard Agreement

**1. Support Term.** The "**Initial Support Term**" for a Pyxis Product means the number of months stated in the applicable Customer Order, beginning on the Term Begin Date stated in the applicable Implementation Timeline. If there is no Term Begin Date set forth in an Implementation Timeline, then the Initial Support Term will begin on the first day of the month after the Pyxis Product is Accepted. Unless a Party provides at least sixty (60) days' prior written notice of its intention to terminate at the end of the Initial Support Term, Support will continue uninterrupted on a month-to-month basis ("**Month-to-Month Support Term**"). A Month-to-Month Support Term may be terminated by either Party, upon no less than thirty (30) days' prior written notice. For the purposes of this Schedule, "**Support Term**" shall mean the Initial Support Term together with any Month-to-Month Support Term.

**2. Monthly Support Fees and Payment.** During the Initial Support Term, the Monthly Support Fee for each Pyxis Product shall be as stated in the Customer Order, and during the Month-to-Month Support Term the Monthly Support Fee will be based on the month-to-month rate set forth in the then-current BD Pyxis™ product price catalog, less any then-applicable discounts (each, a "**Monthly Support Fee**"). Customer will pay the Monthly Support Fees on the first business day of each month during the Support Term. BD may increase the Monthly Support Fee once every twelve (12) months by no more than the Consumer Price Index for medical care plus two percent (2%), provided the increase will be effective (i) upon at least ninety (90) days' written notice to Customer and (ii) as of the anniversary date of the Initial Support Term. If Customer fails to pay any Monthly Support Fees for Support in accordance with the terms of the Customer Order, then BD may cease providing such Support to the Customer upon thirty (30) days' notice, and cease providing any or all Support to any or all entities listed on **Schedule A** (*Eligible Purchaser List*) to the Standard Agreement (if applicable), upon sixty (60) days' notice, for so long as the fees remain unpaid.

**3. Support Plan Conditions; Customer Technology Environment.** BD shall provide Support for each Pyxis Product in accordance with these terms and the Support Plan identified in the Customer Order; provided however, that notwithstanding the Support Plan identified on a Customer Order for BD Pyxis™ Logistics products, the Comprehensive Support Plan shall be the only Support Plan applicable to BD Pyxis Logistics Products. Customer shall facilitate BD's provision of Support, including without limitation: (i) assuring Customer's users obtain and maintain reasonable competence in the use of the Pyxis Products, (ii) ensuring that the applicable elements of Customer's Technology Environment (as such term is defined under the General Terms and Conditions of the Standard Agreement) and infrastructure supporting the Proper Performance (as defined below) of the Pyxis Products: (A) meet the system requirements specified in the applicable User Guide and Documentation, (B) are properly maintained, and (C) that no element of Customer's Technology Environment is discontinued or reaches any applicable end of support date ("**EOS Date**") during the applicable Support Term. For clarity, Customer is responsible for managing the EOS Dates for its Microsoft Windows Server OS and Microsoft SQL server licenses, respectively. If, during the Support Term, Microsoft announces an EOS Date for its Microsoft Windows Server OS and/or Microsoft SQL server licenses, or any other party announces an EOS Date applicable to any other components of Customer's Technology Environment, Customer shall contract for the requisite licenses and/or components and complete the applicable upgrade no later than ninety (90) days prior to the applicable EOS Date(s). If Customer does not timely meet the conditions of this Section, then any and all performance, Support or other issues arising in relation thereto shall be deemed an External Cause (as defined below). Additionally, BD shall have no obligation to, and Customer shall not request BD personnel to maintain, repair or replace any element of Customer's Technology Environment.

**3.1 Properly Performing.** During the Initial Support Term and subject to **Section 7** (*Exclusions*), below, BD will provide replacement parts, labor and Hardware as necessary to keep the Pyxis Products and BD-provided Interfaces performing in accordance with the specifications of the applicable User Guide ("**Properly Performing**"), including replacing Hardware or Software with new Hardware, parts or Software. During any Month-to-Month Support Term, BD will use commercially reasonable efforts to restore the functionality of any Pyxis Product which is not Properly Performing, including the use of refurbished parts, but will have no obligation to replace Hardware or Software with new Hardware, parts or Software. If, during the Month-to-Month Support Term, BD is unable to restore the functionality of a Pyxis Product, then in its sole determination, BD may elect to terminate the Support Term for the Pyxis Product, effective as of the first day of the month following BD's notice of its determination.

**3.2 Technical Support.** To obtain Technical Support, Customer may contact BD's Technical Support Center ("**TSC**"), by phone at 1.800.727.6102 (for immediate response by the TSC) or online at <https://bd.com/self-service-for-non-urgent-matters> twenty-four (24) hours a day, seven (7) days a week, each day of the year. When Customer reports that a Pyxis Product is not Properly Performing (an "**Issue**"), BD will promptly respond to the Customer's report. BD will request additional information about the Issue, if needed, assess the severity of the Issue in consultation with the Customer and begin work to verify, diagnose and resolve the Issue.

**3.3 Remote Issue Resolution.** During the Support Term and subject to **Section II.E** (*Customer Responsibilities*) of the Hardware Schedule included in the Standard Agreement as **Schedule B**, BD will use RSS (as such term is defined under the General Terms and Conditions of the Standard Agreement), as appropriate, in its work to verify, diagnose and resolve an Issue with a Pyxis Product deployed with RSS.

**3.4 Hardware On-Site Issue Resolution.** If BD determines that on-site service is necessary for proper verification, diagnosis or resolution of an Issue related to Hardware, BD will schedule such on-site service with Customer for a mutually agreed upon date. Hardware Issues will be resolved by repairing or replacing Hardware, as determined appropriate by BD to assure the Hardware is Properly Performing, provided that BD will not be obligated to replace Hardware during a Month-to-Month Support Term.

**4. Additional Support of Hardware.** For Hardware, in addition to the Support outlined in **Section 3** above, BD will provide the additional Support summarized in **Table 1** below and detailed in **Subsection 4.1** through **4.4**, below based on the applicable Support Plan.

<b>Table 1 – Additional Hardware-Based Support</b>			
<b>Support Services</b>	<b>Comprehensive</b>	<b>Enhanced</b>	<b>Premier</b>
Guaranteed Response Time	<b>24 Hours</b>	<b>8 Hours</b>	<b>6 Hours</b>
Uptime Guarantee	not included	√	√
Hardware Relocation	√	√	√
Replacement Parts	√	√	√

**4.1 Guaranteed Response Time for On-Site Support.** When BD determines that immediate on-site Support is required and, unless the Parties schedule an alternative time, BD guarantees that a technician will arrive at Customer’s site within six (6) hours after dispatch under the Premier Support Plan; within eight (8) hours after dispatch under the Enhanced Support Plan; and within twenty-four (24) hours after dispatch under the Comprehensive Support Plan (each, a **“Guaranteed Response Time”**). For any failure to meet the applicable Guaranteed Response Time that is the sole fault of CareFusion, Customer, as its sole remedy for the failure, will be entitled to credits against Customer’s Monthly Support Fees, as follows: (i) under the Premier Support Plan, an amount equal to five percent (5%) of the Monthly Support Fees for all Pyxis Products at the site of the affected Pyxis Product; (ii) under the Enhanced Support Plan, an amount equal to twenty percent (20%) of the Monthly Support Fees for the affected Pyxis Products; and (iii) under the Comprehensive Support Plan, an amount equal to five percent (5%) of the Monthly Support Fees for the affected Pyxis Products.

**4.2 Uptime Guarantee.** Under the Premier and Enhanced Support Plans, BD guarantees that, in any calendar month (i) the product of the number of hours in the month and the average number of RSS-enabled Hardware at a Customer site in the month (**“Total Device Hours”**), less (ii) the number of hours in the month required to resolve Issues for such Hardware will not be less than ninety seven percent (97%) of Total Device Hours (**“Uptime Guarantee”**). If BD fails to meet the Uptime Guarantee due to no fault of the Customer or any of its third party vendors or agents, Customer will be entitled, as its sole remedy for the failure, to a credit against Customer’s obligation to pay Monthly Support Fees in an amount equal to ten percent (10%) of the Monthly Support Fees for RSS-enabled Hardware under the Premier Support Plan, and five percent (5%) of the Monthly Support Fees for RSS-enabled Hardware under the Enhanced Support Plan. Customer shall give BD notice of any and all such failures in a calendar quarter not later than the last day of the first month of the following calendar quarter. All credits will be applied to the Monthly Support Fees payable for the third month of the next calendar quarter.

**4.3 Hardware Relocation.** Upon thirty (30) days’ written notice from Customer, BD will relocate eligible Hardware to another Customer-owned facility within one hundred (100) miles, which is included as part of the Monthly Support Fees for eligible Hardware. Relocation Services will be provided during normal business hours or as otherwise mutually agreed upon by the Parties.

**5. Software Support.** For those Pyxis Products that are on-premise Software Products, in addition to the Support obligations outlined in **Section 3** above, BD will provide the following Support, based on the Support Plan identified in the Customer Order, as summarized in **Table 2** below and as detailed in **Subsections 5.1** through **5.12**, below.

<b>Table 2</b>			
<b>Support Services</b>	<b>Comprehensive</b>	<b>Enhanced</b>	<b>Premier</b>
Remote Support Services	√	√	√
Updates and Upgrades	√	√	√
Remote Server Migration Assistance	not included	not included	√
Virtual Machine (VM) Deployments	√	√	√
Proactive Monitoring for applicable RSS-enabled Pyxis Products	√	√	√
Project Management for Upgrades	√	√	√
Online Learning	√	√	√
BD Knowledge Portal for Medication and Supply Technologies	√	√	√
Remote Data Support*	not included	√	√
Remote Practice Support*	not included	√	√
Data Driven Performance Assessment*	not included	1/year	1/year
Data Driven Workflow Assessment*	not included	not included	1/year
Dispensing System Manager Certificate Courses Tuition Waiver*	not included	1 seat/eligible Customer Order	1 seat/year
Dispensing Pyxis Technologies Data Workshop Tuition Waiver*	not included	not included	2 staff members/12-month period
On-Site Clinical Consulting*	not included	not included	1 on-site visit/year
*Applies only to facility-wide Customer Orders for BD Pyxis MedStation ES and/or BD Pyxis SupplyStation Products that are subject to the Enhanced or Premier Support Plan, as applicable. These entitlements do not apply to Customer Orders for additional quantities of BD Pyxis MedStation ES and/or BD Pyxis SupplyStation Products already installed at a Customer ship-to facility.			

**5.1 Updates.** During the Support Term, if BD generally releases an Update (as such term is defined under the General Terms and Conditions of the Standard Agreement) to the Software for a Pyxis Product, then BD will deliver the Update to Customer and Customer will install the Update via an automatic or manual reboot of the respective device when required. Customer may review BD's cybersecurity bulletin, accessible at: <https://www.bd.com/en-us/about-bd/cybersecurity?lastUpdate=all-dates> for more information on certain Updates released by BD. After installation of the Update, Customer will promptly test the connections between the Pyxis Product and Customer's information system. Except as stated in this Section, in accordance with **Section II.C (Software Revisions)** of the Hardware Schedule included in the Standard Agreement as **Schedule B**, BD does not provide Updates or any other revisions to third party software not acquired by Customer from BD.

## 5.2 Upgrades.

- (a) **General.** During the Support Term, if BD generally releases an Upgrade (as such term is defined under the General Terms and Conditions of the Standard Agreement) to Software (not including Third Party Software) for a Pyxis Product, then BD will install the Upgrade on the applicable Pyxis Product and BD-provided server(s) so long as Customer's existing Hardware has not reached End-of-Life (as such term is defined under **Section 8**, below) and is capable of supporting the installation of such Upgrade. Except as otherwise stated in this section, in accordance with **Section II.C (Software Revisions)** of the Hardware Schedule included in the Standard Agreement as **Schedule B**, Upgrades will not include any new or replacement hardware, Third Party Software (such as third-party operating system software on servers or BD Pyxis devices), any hardware or software that is part of Customer's Technical Environment, or any other Software that BD generally licenses separately.
- (b) **Exception.** As applicable only to qualifying Pyxis Products that are on the ES platform ("**Pyxis ES Products**"), if the Upgrade is for the installation of BD Pyxis ES Software version 1.7.3 or newer ("**Device Software**"), then such Upgrade will be provided in accordance with and subject to **Section 5.2(a)** above, except that CareFusion will include an upgrade of the third-party operating system software on the qualifying Pyxis ES Product ("**Device OS**") to the minimum version of such Device OS as required to complete the Upgrade and support the Proper Performance of the qualifying Pyxis ES Product. For the avoidance of doubt, the foregoing does not apply to third-party operating system software for any servers used in connection with a qualifying Pyxis ES Product.

**5.3 Remote Server Migration Assistance.** If eighty percent (80%) of Customer's Pyxis Products connected to the applicable server are subject to the Premier Support Plan, then, as part of BD's Support obligations under the Premier Support Plan, BD will provide a total of two (2) instances of server migrations for each server deployment to move BD applications and Customer-owned Data to the latest supported server operating system to support the applicable Pyxis Products.

**5.4 Virtual Machine (VM) Deployment Services.** For Software deployed using VM technology, if the applicable relational database server (e.g., MSSQL) instance is housed locally in the BD-provided VM container, then Support will include (i) database backup and recovery, (ii) operating system patches, updates and security, and (iii) the applicable relational database server (e.g., MSSQL). If the applicable relational database server instance is not housed locally in the BD-provided VM container, then Customer shall have the obligations set forth in **Section 6.4 (Virtual Machine (VM) Deployments)**.

**5.5 Proactive Monitoring.** For applicable RSS-enabled Pyxis Products, BD will provide continuous 24/7/365 monitoring of the performance of the applicable RSS-enabled Pyxis Products via RSS and will proactively notify identified Customer representatives of specific alarms and events that BD has acted upon either to prevent a reactive service condition or to correct a reactive condition that may have occurred.

**5.6 Project Management for Upgrades.** A BD project manager will remotely assist Customer in managing project tasks and deliverables for Software Upgrades, including the facilitation and coordination of activities to complete project plan milestones, resource coordination and regular progress updates to Customer's project leadership team.

**5.7 Online learning.** BD will provide Customer with access to its online learning management system. Customers with access to this portal can also view scheduled trainings and webinars. In addition, Customer may participate in BD-hosted webinars with clinicians to discuss best practices in using the Software. Webinars may be accessed at [MyBDLearning.litmos.com](http://MyBDLearning.litmos.com).

**5.8 BD Knowledge Portal for Medication and Supply Technologies.** The BD Knowledge Portal for Medication and Supply technologies ("**Knowledge Portal**"), provides Customer with secure access to an analytical tool to analyze system data, run reports and aggregate data from applicable Pyxis Products. Customer which opt-in for Knowledge Portal under a Customer Order may access Knowledge Portal via the following website: [www.CareFusionanalytics.com](http://www.CareFusionanalytics.com). Resources available at the website include product documentation, self-study courses, and group training sessions.

**5.9 Remote Data Support.** For qualifying Support Plans, as described in **Table 2** above, BD will provide access to qualified consultants to address Customer data set questions and concerns and to assist with the interpretation of Knowledge Portal data. To obtain data support, Customer may contact [pyxisupport@bd.com](mailto:pyxisupport@bd.com). BD will monitor and respond within twenty-four (24) hours of receipt Monday through Friday from 5:00 a.m. to 5:00 p.m. Pacific Time.

**5.10 Remote Practice Support.** For qualifying Support Plans identified in **Table 2** above, BD will provide remote practice support, answering Customer's questions about features, functions and operation of the Software. To obtain remote practice support, Customer may contact [pyxisupport@bd.com](mailto:pyxisupport@bd.com). BD will monitor and respond within twenty-four (24) hours of receipt Monday through Friday from 5:00 a.m. to 5:00 p.m. Pacific Time.

**5.11 Data Driven Performance Assessment.** For qualifying Support Plans, as described in **Table 2** above, once during each year of the Initial Support Term stated on an eligible Customer Order, BD will, at Customer's request, remotely conduct an extensive analysis and assessment of Knowledge Portal data to identify opportunities for Customer to maximize safety, pharmacy efficiency, and nursing satisfaction, while minimizing the impact of excess or outdated inventory ("**Data Performance Assessment**"). For clarity, the Data Performance Assessment described in this Section does not apply during any Month-to-Month Support Term.

**5.12 Data Driven Workflow Assessment.** For qualifying Support Plans, as described in **Table 2** above, once during each year of the Initial Support Term stated on an eligible Customer Order, BD will provide one (1) on-site visit, following the Data Performance Assessment, from a highly qualified consultant to support workflow improvements with further analysis and assessments ("**Data Workflow Assessment**"). For clarity, the Data Workflow Assessment described in this Section does not apply during any Month-to-Month Support Term.

**5.13 Dispensing System Manager Certificate Courses Tuition Waiver.** For qualifying Support Plans, as described in **Table 2** above, upon execution of an eligible Customer Order, BD will waive tuition for Customer's staff at the ship-to facility set forth in the applicable Customer Order to attend a generally available system manager course, which may be held virtually or at BD's facility. Course dates are available at [MyBDLearning.litmos.com](http://MyBDLearning.litmos.com). Unused seats shall not be applied towards subsequent years or after the Initial Support Term.

**5.14 Dispensing System Data Workshop Tuition Waiver.** Under the Premier Support Plan only, as described in **Table 2** above, upon execution of an eligible Customer Order, BD will waive tuition for two (2) members of Customer's staff to attend a data workshop no more than once during each twelve (12) month period during the Initial Support Term stated on the applicable Customer Order. Course dates are available at <https://bdworkshops.com/>. Unused seats shall not be applied towards subsequent years or after the Initial Support Term.

**5.15 On-Site Clinical Consulting.** For Pyxis Products subject to the Premier Support Plan, at Customer's request, BD will provide on-site clinical consulting for practice reinforcement and best practices as the Parties deem appropriate for Customer's site. BD will provide this Support in one 8-hour visit for up to two hundred (200) devices at the site. If there are more than two hundred (200) devices and multiple visits are required, then the on-site Support shall be scheduled on consecutive weekdays. Customer may schedule this Support no less than six (6) weeks in advance. BD will perform this Support one (1) time during each twelve (12) month period during the Initial Support Term, beginning upon execution of an eligible Customer Order.

## 6. Customer Obligations

**6.1 Server Support.** Customer will ensure the proper functioning and availability of (i) Customer's side of station and server network connectivity, (ii) Customer-provided server equipment, and (iii) server-based, non-application related system performance and downtime, e.g., operating system, database issues, host system etc.

**6.2 System Requirements.** Customer will provide (i) station and server environment, (ii) Customer data center and network availability, (iii) conformance with minimum server environment requirements for the Pyxis Product(s) as set forth in an applicable system requirements or similar project scoping documentation, and (iv) a virtual platform approved by BD for all BD-provided Virtual Machine deployments as set forth in an applicable system requirements or similar project scoping documentation.

**6.3 Interface Modification.** If BD modifies an Interface between a Pyxis Product and Customer's information system as part of Support, then Customer will test the modified Interface within seventy-two (72) hours. Customer's sole remedy for any Issues related to Interface functionality will be for BD to modify the Interface to provide full functionality.

**6.4 Virtual Machine (VM) Deployments.** If the applicable relational database server instance is not housed locally in the BD-provided VM container then, for Software deployed using VM technology, Customer will provide all services for (i) database backup and recovery, (ii) operating system patches, updates and security, and (iii) the performance of the applicable relational database server (e.g., MSSQL) instance for the Pyxis Product(s).

**6.5 Active Directory.** For products that support Active Directory capability, Customer will provide integrated Active Directory services and user administration, e.g., passwords, user log-in, etc.

**6.6 Data Backup.** Where applicable, Customer will implement a network data backup capability that is remote to Pyxis Product(s) and in accordance with guidelines provided by BD.

**6.7 Software Patching.** Customer will manage the scheduling and deployment of BD-approved software patches to servers and devices (e.g., operating system, anti-virus, and product patches) for applicable Pyxis ES Products, with such deployment occurring either manually or automatically, as elected by the Customer.

**6.8 Peripherals.** Customer will provide support for all non-BD provided peripheral products, e.g., mobile devices.

**6.9 Consumables.** Customer is solely responsible for the replacement or installation of consumables, including but not limited to batteries, paper and toner.

**6.10 Additional Services.** Any service not specifically identified herein as a component of the Support Plan elected by Customer under the Customer Order may be provided by BD under separate agreement between the Parties at BD's then-current time and materials rates for that service.

**6.11 Onsite Support; Medication Handling.** Customer may cancel scheduled onsite Support by delivering notice to TSC no less than two (2) business days prior to the start date. If Customer fails to provide timely notice or interferes with BD's performance of scheduled onsite Support, then the Guaranteed Response Time will not be honored, and the Uptime Guarantee calculation will not include the service case hours associated with that service call. BD employees and agents ("**BD Personnel**") shall not handle Customer's medications. Customer must be present and capable of monitoring BD Personnel during any activity in which medications are present. If Customer fails to do so, then Customer will reimburse BD for any expenses related to re-scheduling such activity.

## 7. Exclusions

**7.1 Outdated Software.** BD is not obligated to provide Support, and no Uptime Guarantee or Guaranteed Response Time applies, for a Pyxis Product that is more than two (2) versions older than the then-current version.

**7.2 Customer Equipment.** BD will not provide Support for products that are not Pyxis Products, including but not limited to Customer's equipment, software and personal peripheral devices (e.g., mobile devices, printers) used in conjunction with the Pyxis Products.

**7.3 External Causes.** BD is not obligated to perform Support for any part of a Pyxis Product which is not Properly Performing: (i) because of any cause set forth under **Schedule B, Section F (Exclusions)** to the Standard Agreement, including any Support activity that is a Customer obligation as defined in **Section 6 (Customer Obligations)** above; (ii) because Customer prevents or refuses installation of an Update or Upgrade; or (iii) (iii) due to unauthorized repairs, including modification, alteration, adjustment, or installation or use of any software not approved in writing by CareFusion for use with a Pyxis Product (collectively, "**External Causes**"). If Customer requests that BD attempt to correct a problem with a Pyxis Product attributable to an External Cause, then BD will use commercially reasonable efforts to repair the Pyxis Product on a time and materials basis at BD's then-current rates and prices.

**8. Third-Party Applications and Equipment Limitations.** Support for any Software or Hardware sublicensed or resold, as applicable, to Customer by BD, including, but not limited to, the Codonics® Safe Label System™ (hereafter, each, a "**Resale Product**") will be limited to the support and maintenance provided by that third party, with BD as the primary point of contact for such support and maintenance. If requested by BD, BD shall serve as liaison between Customer and the applicable third party for support requested by Customer, with such liaison services provided at CareFusion's then-current service rates.

For the sake of clarity, (i) the Limited Warranty set forth in **Section I.H (Warranties)** of the General Terms and Conditions of the Standard Agreement will have no application to a Resale Product; (ii) none of the Support Plans, terms or conditions beginning at **Section 3** of this Schedule or any other Support-related terms and conditions under the Hardware Schedule attached as **Schedule B** to the Standard Agreement shall apply to a Resale Product; and (iii) if Customer fails to pay Monthly Support Fees for a Resale Product, BD will instruct the applicable third party to cease providing Support to Customer and any or all of its facilities for the Resale Product.

**9. End of Life.** From time to time, as part of BD's ongoing product and service development programs, BD may discontinue Pyxis Products and replace them with one or more of these technologies, products and services. To help customers identify these transitions and plan for infrastructure adjustments, BD maintains end-of-sale and end-of-life policies for all Pyxis Products. BD will, among other things (i) announce the date on which BD will no longer license, lease, sell or service a Product ("**End-of-Sale**"), (ii) specify the date on which BD will cease providing Support for a Pyxis Product ("**End-of-Life**"), and (iii) identify one or more new technologies or services, or existing Pyxis Products, that may be separately contracted for as suitable replacements for the End-of-Sale or End-of-Life Product. For clarity, if a Pyxis Product is announced as reaching End-of-Life during the Initial Support Term for that Pyxis Product, BD will continue to provide Support for such End-of-Life Pyxis Product for the remainder of the applicable Initial Support Term pursuant to the terms and conditions of this Schedule.

**10. Parts.** BD may use refurbished parts during service so long as it uses the same quality control procedures as for new parts. Any part for which BD has supplied a replacement shall become BD owned property.

