

Hospital Vendor Contract Summary Sheet

1. ☒ Existing Vendor ☐ New Vendor
2. **Name of Contract:** Amendment to Triage Placement Agreement
3. **Contract Parties:** Vendor: Quidel Corporation / Distributor: Henry Schein
4. **Contract Type Services:** Equipment placement with obligated consumable purchase.
 - a. **Impacted Hospital Departments:** Lab
5. **Contract Summary:** This is an Amendment to the Quidel Triage Agreement (#HSM-01888793) dated July 24, 2019, allowing the hospital to receive a Quidel Triage Analyzer at no cost as long as the hospital meet the Annual Purchase Obligations set forth in the Amendment.
6. **Cost:** \$7,917.40

Product	Catalog Number	List Price Per Kit	Customer Price Per Kit	List Price Per Test	Customer Price Per Test	Annual Purchase Obligation	
						Tests	\$ (Dollar Amount)
TRGE CARDIAC PNL,TNL 25T US	97021HS	\$ 575.00	\$ 504.00	\$ 23.00	\$ 20.16	90.00	\$ 1,814.40
TRIAGE D-DIMER PANEL 25T	98100	\$ 787.50	\$ 612.00	\$ 31.50	\$ 24.48	90.00	\$ 2,203.20
TRIAGE BNP PANEL 25T	98000XR	\$ 825.00	\$ 688.50	\$ 33.00	\$ 27.54	120.00	\$ 3,304.80
TRIAGE KIT, CONTROL LVL1,TC5	88753	\$ 130.00	\$ 110.00	\$ 130.00	\$ 110.00	1.00	\$ 110.00
TRIAGE KIT, CONTROL LVL2,TC5	88754	\$ 130.00	\$ 110.00	\$ 130.00	\$ 110.00	1.00	\$ 110.00
TRIAGE KIT, CAL VERS TOTAL 5	88755	\$ 90.00	\$ 80.00	\$ 90.00	\$ 80.00	1.00	\$ 80.00
TRIAGE BNP CTRLS LEVEL 1 UD	98013XR	\$ 110.00	\$ 105.00	\$ 110.00	\$ 105.00	1.00	\$ 105.00
TRIAGE BNP CTRLS LEVEL 2 UD	98014XR	\$ 110.00	\$ 105.00	\$ 110.00	\$ 105.00	1.00	\$ 105.00
TRIAGE BNP CALIB VIFICATION SET	98015XR	\$ 90.00	\$ 85.00	\$ 90.00	\$ 85.00	1.00	\$ 85.00
Aggregate Annual Consumable Purchase Obligation:						306.00	\$7,917.40

7. **Prior Cost:** \$7,860.00

Product	Catalog Number	Customer Price Per Kit	Estimated Purchase Obligation	
			Tests	\$ (Dollar Amount)
TRGE CARDIAC PNL (TNL) 25T US	97021HS	\$500.00	90.00	\$ 1,800.00
TRIAGE D-DIMER PANEL 25T	98100	\$600.00	90.00	\$ 2,160.00
TRIAGE BNP PANEL 25T	98000XR	\$675.00	120.00	\$ 3,240.00
TRIAGE KIT, CONTROL LVL1,TC5	88753	\$130.00	1.00	\$ 130.00
TRIAGE KIT, CONTROL LVL2,TC5	88754	\$130.00	1.00	\$ 130.00
TRIAGE KIT, CAL VERS TOTAL 5	88755	\$90.00	1.00	\$ 90.00
TRIAGE BNP CTRLS LEVEL 1 (UD)	98013XR	\$110.00	1.00	\$ 110.00
TRIAGE BNP CTRLS LEVEL 2 (UD)	98014XR	\$110.00	1.00	\$ 110.00
TRIAGE BNP CALIB VIFICATION SET	98015XR	\$90.00	1.00	\$ 90.00
Aggregate Annual Consumable Purchase Estimation:			306.00	\$7,860.00

8. Termination Clause:

If Hospital fails to cure the Annual Purchase Obligations within 30 days, Quidel may: (i) raise pricing for the remaining Term of the Agreement based on volumes actually purchased or (ii) terminate the Agreement.

a. Term: Expires on December 31, 2025.

9. Other:



AMENDMENT TO TRIAGE PLACEMENT AGREEMENT

Quidel Corporation, 9975 Summers Ridge Road,
San Diego, CA 92121 ("Notice Address")

Customer Information		Quidel Customer #	451269679
Facility Name	Mangum Regional Medical Center	Quidel Rep	Craig Raybuck
Address	1 Wickersham St Mangum, OK 73554	Quidel Rep Contact	craig.raybuck@orthoclinicaldiagnostics.com
		Original Contract Term	36-Months
Primary Contact	Josey Kenmore	Distributor (If any) / Account #	Henry Schein
Phone	(580) 782-3353	Distributor Rep	Nathan Higgins
E-Mail		Distributor Customer Account #	
Fax		Contract ID #	HSM-01888793
		Legacy Contract ID #	

This amendment, including any attached exhibits, schedules, and/or addenda ("Amendment") modifies the Triage Placement Agreement (the "Original Agreement") between the customer described in the table above ("Customer") and Quidel Corporation ("Quidel"), originally dated [July 24, 2019]. This Amendment is effective as of the date of Quidel's signature below ("Amendment Effective Date"). The Original Agreement, as amended previously and/or including this Amendment shall be referred to herein as the "Agreement". Capitalized terms that are not otherwise defined herein shall have the same meaning as they do in the Original Agreement. The terms "Annual Purchase Obligation" and "Annual Consumable Purchase Obligation" shall have the same meaning.

THE FOLLOWING MODIFICATIONS HEREBY AMEND THE AGREEMENT:

- AGREEMENT TERM** ("Term"): The Term of the Agreement shall expire on: **[December 31, 2025]**.
- PURCHASE COMMITMENTS**: The following Annual Consumable Purchase Obligation hereby replaces the prior commitment.

Product	Catalog Number	List Price Per Kit	Customer Price Per Kit	List Price Per Test	Customer Price Per Test	Annual Purchase Obligation	
						Tests	\$ (Dollar Amount)
TRGE CARDIAC PNL,TNL 25T US	97021HS	\$ 575.00	\$ 504.00	\$ 23.00	\$ 20.16	90.00	\$ 1,814.40
TRIAGE D-DIMER PANEL 25T	98100	\$ 787.50	\$ 612.00	\$ 31.50	\$ 24.48	90.00	\$ 2,203.20
TRIAGE BNP PANEL 25T	98000XR	\$ 825.00	\$ 688.50	\$ 33.00	\$ 27.54	120.00	\$ 3,304.80
TRIAGE KIT, CONTROL LVL1,TC5	88753	\$ 130.00	\$ 110.00	\$ 130.00	\$ 110.00	1.00	\$ 110.00
TRIAGE KIT, CONTROL LVL2,TC5	88754	\$ 130.00	\$ 110.00	\$ 130.00	\$ 110.00	1.00	\$ 110.00
TRIAGE KIT, CAL VERS TOTAL 5	88755	\$ 90.00	\$ 80.00	\$ 90.00	\$ 80.00	1.00	\$ 80.00
TRIAGE BNP CTRLS LEVEL 1 UD	98013XR	\$ 110.00	\$ 105.00	\$ 110.00	\$ 105.00	1.00	\$ 105.00
TRIAGE BNP CTRLS LEVEL 2 UD	98014XR	\$ 110.00	\$ 105.00	\$ 110.00	\$ 105.00	1.00	\$ 105.00
TRIAGE BNP CALIB VFICATION SET	98015XR	\$ 90.00	\$ 85.00	\$ 90.00	\$ 85.00	1.00	\$ 85.00
Aggregate Annual Consumable Purchase Obligation:						306.00	\$7,917.40

- EQUIPMENT OPTIONS**: Pursuant to Customer's purchase commitments herein, and in addition to the Equipment already in Customer's possession under the Agreement, Quidel shall provide Customer with the additional Equipment set forth below, at no additional charge during the Term of the Agreement. The value listed below reflects the annual discount amount associated with Customer's annual purchases of Consumables and is provided to support Customer's discount reporting obligations:

Product Description	Fair Market Value of Annual Use, per Unit	Quantity	Total Fair Market Value of Annual Use Provided to Customer (Unit Value x Quantity)	Total Charge
Triage MeterPro, item #55070MP	\$1,399.00 each	0	\$0.00	No additional charge

Bar Code Scanner for Triage Meter BOM, item #52111MP	\$133.33 each	0	\$0.00	No additional charge
Aggregate Fair Market Value of Annual Use of Equipment Provided to Customer:			\$0.00	No additional charge

Customer will have the following cumulative Triage MeterPro allocated under the Agreement after signing this Amendment: **[1]**

4. MISCELLANEOUS.

- (i) Termination for Reselling. Quidel may terminate the Agreement immediately upon written notice to Customer in the event Customer resells the Products to third parties as determined in Quidel's sole discretion.
- (ii) No Additional Modification. The Agreement, as amended by this Amendment, is and shall continue to be in full force and effect in accordance with its terms, and, except as expressly set forth in this Amendment, no other amendment or modification to the Agreement is agreed to or implied by this Amendment.
- (iii) Entire Agreement. This Amendment, including the addenda, contains the entire understanding with respect to the subject matter of this Amendment and supersedes all prior written and oral agreements, proposals, and representations made between the parties.

The representatives signing below, having authority to execute this Amendment on behalf of their respective organizations, hereby agree to the above modifications to the Agreement, which is incorporated herein by reference.

Customer Legal Name: Mangum Regional Medical Center	Quidel Corporation
Signed By:	Signed By:
Name:	Name:
Title:	Title:
Date:	Effective Date:

SHIP TO ADDENDUM

This Addendum permits Quidel to accept purchase orders from the following Customer “Ship To” entities referenced below, and permits Quidel to ship products directly to such entities. Customer represents that it has the authority to bind each entity to this Agreement, and each entity shall be bound by this Agreement, as if such entity signed this Agreement. Each entity shall be obligated for their purchases made pursuant to this Agreement.

Participating Sites:

Membership ID	Territory ID	Account Number	Account Name	Address	City	St	Zip
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ORDERING INFORMATION

Distribution partner, please use information below for purposes of placing an initial sales order.

Test Kits, Controls, Calibrators and Instruments	ITEM NUMBER	SKU	QUANTITY
	Triage BNP Panel 25T	98000XR	
	Triage BNP Controls Level 1 - 5T	98013XR	
	Triage BNP Controls Level 2 - 5T	98014XR	
	Triage BNP Calibration Verification Set – 2 Sets/5T each	98015XR	
	Triage Cardiac Panel 25T	97000HS	
	Triage Cardiac Panel TNI 25T	97021HS	
	Triage Cardiac Panel TNI/CK-MB 25T	97022HS	
	Triage D-Dimer Panel 25T	98100	
	TRIAGE KIT, CONTROL Level 1, TC5 - includes BNP, D DIMER, CK-MB, MYO, TNI - 5 Vials per box	88753	
	TRIAGE KIT, CONTROL Level2, TC5 includes BNP, D DIMER, CKMB, MYO, TNI - 5 Vials per box	88754	
	Triage Total Calibration Verification 2 Sets/5T each – total 10T	88755	
	Triage TOX DS 9 KIT	94600	
	Triage TOX DS Controls Level 1 – 5T	94613	
	Triage TOX DS Controls Level 2 – 5T	94614	
	Triage Rapid BUP, MDMA, OXY Panel	16-20348	
	Triage Rapid PCP Single Test	16-20349	
	Triage Rapid Negative Control	10-ZNC-000	
	Triage Rapid Positive Control	10-ZPCOX-220	
	Triage Drug Screen Evaluation Panel	26657	
	Triage Census ATM Software	55069	
	Triage MeterPro	55070MP	
	Bar Code Scanner for Triage Meter BOM	52111MP	
	Digi Port-Server TS1 (1 port unit)	52291	
	Digi Port-Server TS2 (2 port unit)	52292	
	Digi Port-Server TS4 (4 port unit)	52293	
Additional Shipping Info			

ADDITIONAL TERMS AND CONDITIONS

PURCHASES OF PRODUCTS THROUGH A DISTRIBUTOR ARE GOVERNED BY CUSTOMER'S AGREEMENT WITH THAT DISTRIBUTOR WITH RESPECT TO PAYMENT, SHIPMENT, RETURNED GOODS, AND WARRANTY TERMS.

1. **ORDER PLACEMENT; DELIVERY AND SHIPMENT TERMS.** Customer must submit firm written purchase orders for Consumables. No order shall be binding upon Quidel unless and until accepted by Quidel in writing. Customer shall not be entitled to revoke, reschedule, or cancel any purchase order after acceptance by Quidel without Quidel's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Quidel will use reasonable efforts to deliver accepted orders in accordance with its delivery schedule provided by the order acceptance, acknowledgment, confirmation or similar document, and if no such schedule is stated, promptly. All Products will be shipped by Quidel FOB Origin Quidel's point of shipment. All packing, transportation expenses, handling charges, freight, and insurance (if any) shall be for the account of Customer, and Quidel shall charge Customer for all such charges, costs and expenses as a separate line item on Customer's invoice. Quidel will select the mode of shipment and the carrier, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed as an agent of Quidel. Title to the Consumables and risk of loss, damage and delay to the Consumables will pass to Customer upon Quidel's tender of delivery of the Consumables. Quidel shall not be obligated to procure additional insurance.
2. **CUSTOMER PRODUCT INSPECTION, ACCEPTANCE AND RETURNED GOODS POLICY.** Customer shall be allowed five (5) days from the date of receipt of any order to provide a written notice of rejection to Quidel of any Product that (i) fails in a material way to meet the Limited Warranty set forth below, (ii) is damaged, (iii) has other visible defects, or (iv) is shipped in error. Otherwise, Customer shall be deemed to have accepted the Product as shipped. PRIOR TO RETURNING ANY PRODUCT, CUSTOMER MUST REQUEST A RETURN GOODS AUTHORIZATION NUMBER FROM QUIDEL (THE "RGA NUMBER") AND DELETE ANY AND ALL PHI STORED IN THE EQUIPMENT, INCLUDING PATIENT IDS AND ORDER NUMBERS. UNLESS QUIDEL HAS AUTHORIZED IN WRITING THE RETURN OF ANY PRODUCT, QUIDEL WILL NOT BE OBLIGATED TO ACCEPT, MAKE ANY EXCHANGE, REPLACE OR PROVIDE CREDIT OR REFUND FOR ANY PRODUCT RETURNED BY CUSTOMER. As promptly as practicable after written confirmation by Quidel of properly rejected Product and if Quidel desires that Customer return a Product, Customer shall return the same to Quidel freight prepaid.
3. **PAYMENT TERMS, PRICING AND TAX INFORMATION.** Terms of payment are strictly net thirty (30) days from date of invoice. Prices set forth in the Agreement are guaranteed for one year from the date of this Agreement. Quidel or Distributor, as applicable, may increase prices by an amount not to exceed three percent (3%) or the applicable increase in the National Consumer Price Index (CPI), whichever is lower, in any year beyond the initial year of the Agreement. Customer's obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. All overdue payments shall bear interest at a rate of one and one-half percent (1.5%) per quarter or the maximum rate permitted by applicable law, whichever is lower, until paid. Unless Customer is fully exempt from all taxes, Customer shall reimburse Quidel or pay directly if requested by Quidel all federal, state and local taxes which may be imposed upon the use, possession, ownership and/or loan of the Consumables and/or Equipment.
4. **EQUIPMENT USE AND CONSUMABLES.** Customer shall use Equipment (i) only in the United States or any territory of the United States at the Customer's "ship to" address (unless Quidel consents to moving the Equipment to another location); (ii) for Customer's "own use" and not for resale purposes; (iii) in the manner described in the User Manual, applicable Product labeling or according to Quidel's instructions; and (iv) in accordance with all applicable law. Customer shall not make any changes or alterations in, or attachments to, the Equipment, or remove any labels, signs, symbols, trademarks, or serial numbers affixed to the Equipment. Customer may use Quidel Equipment only with Quidel Consumables. Notwithstanding the limited use of Equipment, Customer may purchase non-Quidel consumables for use with Equipment when such use is safe and appropriate with Quidel Equipment and medically necessary, upon patient request, or if, it is in the best interest of the patient.
5. **SERVICE AND TECHNICAL SUPPORT.** Quidel shall provide service and maintenance for the Equipment (excluding network hardware) provided under this Agreement, during the Term of the Agreement, at no additional charge to Customer, provided that Customer fully complies with this Agreement. Prior to return of the Equipment to Quidel for service or maintenance, Customer must first delete any PHI stored locally on the Equipment. This Agreement does not cover service or parts for any attachments, accessories, or alterations not marketed by Quidel, nor to correct problems from their use. Throughout the term of this Agreement, Customer shall be responsible for routine maintenance of the Equipment, including replacement of batteries and all maintenance and cleaning set forth in the Maintenance and Cleaning section of the User Manual. Customer will be responsible for any damage to the Equipment caused by Customer's negligent acts or omissions, or by any service performed by persons other than Quidel's authorized dealer. Quidel reserves the right to use refurbished Equipment as replacement Equipment. Service includes software upgrades for reliability or operational improvements at no additional charge (excludes menu expansion). Technical support is provided for all Products provided directly from Quidel Corporation.
6. **LIMITED WARRANTY.** QUIDEL WARRANTS THAT THE CONSUMABLES SHALL CONFORM SUBSTANTIALLY WITH THE SPECIFICATIONS SET FORTH IN THE RELATED PACKAGE INSERTS AND COMPLY WITH AND BE MANUFACTURED, PACKED, STERILIZED (IF APPLICABLE), LABELED AND SHIPPED IN MATERIAL COMPLIANCE WITH ALL APPLICABLE LAWS, RULES, REGULATIONS AND STANDARDS. QUIDEL WARRANTS THAT THE EQUIPMENT WILL BE MATERIALLY FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF SHIPMENT. QUIDEL'S SOLE LIABILITY AND BUYER'S SOLE REMEDY FOR BREACH OF THIS LIMITED WARRANTY, OR IN RELATION TO ANY DELAY OR DEFAULT IN SUPPLYING THE PRODUCTS, OR ANY OTHER CLAIM SHALL BE LIMITED TO, AT QUIDEL'S OPTION, THE REFUND OR CREDIT OF THE PRODUCT PRICE FOR SUCH PRODUCT (INCLUDING SHIPPING COSTS) OR REPAIR OR REPLACEMENT OF SUCH PRODUCT (WITH NEW AND/OR RECONDITIONED PARTS OR PRODUCTS) AT QUIDEL'S COST AND EXPENSE (INCLUDING SHIPPING). QUIDEL MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER AS TO IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR ANY PARTICULAR PURPOSE, INTEROPERABILITY, OR NON-INFRINGEMENT, OR ANY OTHER MATTER. QUIDEL DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE PRODUCT SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. QUIDEL'S MAXIMUM LIABILITY FOR ANY CUSTOMER CLAIM ARISING FROM THIS AGREEMENT SHALL NOT EXCEED THE NET PRODUCT PRICE PAID BY CUSTOMER. IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF USE OR REVENUE, OR PROFITS IN CONNECTION WITH OR ARISING OUT OF QUIDEL'S PROVISION OF ANY PRODUCTS, OR CUSTOMER'S USE OF ANY PRODUCTS PROVIDED BY QUIDEL OR DAMAGE TO SYSTEMS, PROGRAMS, OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITED WARRANTY CONTAINED HEREIN DOES NOT APPLY TO EQUIPMENT DAMAGED THROUGH ABNORMAL USE, MISUSE, MISHANDLING, NEGLIGENCE, ACCIDENT, NEGLIGENCE, TAMPERING OR UNAUTHORIZED SERVICE. THE TERMS SET FORTH HEREIN PURSUANT TO WHICH QUIDEL AGREES TO PROVIDE PRODUCT TO CUSTOMER REFLECT THE PARTIES' AGREED UPON ALLOCATION OF RISK AND LIMITATIONS HEREIN SHALL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

7. **COMPLIANCE WITH LAWS AND DISCOUNT REPORTING.** The parties shall comply with applicable state and federal laws in the performance of this Agreement, including, without limitation, the federal False Claims Act (31 U.S.C. §§ 3729 et seq.), the federal anti-kickback statute (42 U.S.C. § 1320a-7b(b)), the federal Physician Payment Sunshine Act (the "AKS", 42 U.S.C. § 1320a-7h), the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act (collectively, "HIPAA"), and any regulations implementing such laws, as well as all comparable state and local laws and regulations. Any discounts provided in connection with the sale of products are intended to comply with the AKS. Customer shall fully and accurately report in applicable cost reports and other submissions to federal healthcare programs all discounts provided and, upon request of the Secretary of the U.S. Department of Health and Human Services or a state agency, shall make available information provided to Customer by Supplier concerning the discounts. Customer acknowledges that compliance with the AKS exception or regulatory safe harbor for discounts, including the reporting obligations, is a condition precedent for the sale of products and that Supplier would not have agreed to sell products hereunder had Customer not agreed to comply with such obligations. Customer acknowledges and agrees that Quidel is not a HIPAA Business Associate to Customer. Customer acknowledges and agrees that Quidel has the authority, in its sole and absolute discretion, to recall any Product to comply with applicable laws, and Customer agrees to fully cooperate with Quidel in the case of any such recall.
8. **NON-DEBARMENT/EXCLUSION.** Each party represents and warrants that neither it, nor any of its directors, employees, or agents, has ever been barred or excluded from participating in any federal or state health care program, or convicted of a criminal offense with respect to health care reimbursement. Each party shall immediately notify the other party if the foregoing representation becomes untrue, or if either party is notified by the Office of Inspector General of the Department of Health and Human Services or other enforcement agency that an investigation of the party or any of its directors, employees, or agents has begun which could lead to such debarment, exclusion, or conviction. In the event that either party or any of its directors, employees, or agents is debarred or excluded from participating in any federal or state health care program during the term of this Agreement, or if at any time after the Effective Date of this Agreement it is determined that either party is in breach of this section, this Agreement shall, as of the effective date of such debarment or exclusion be automatically terminated.
9. **TERMINATION.** Either party may terminate this Agreement following a default by the other party of its obligations hereunder if such default is not cured within thirty (30) days after delivery of notice of such default to the defaulting party or the other party files a petition in bankruptcy, is adjudicated bankrupt, makes a general assignment for the benefit of creditors, or is voluntarily or involuntarily dissolved. If neither party provides prior written non-renewal notice to the party at least sixty (60) days prior to the end of the Term, then the Term shall be automatically extended for twelve (12) months. Upon termination of this Agreement, Customer will carefully pack and ship the Equipment to Quidel in substantially the same condition as received (ordinary wear and tear excepted) in accordance with the terms herein. If the Equipment is returned, Customer shall be responsible for: (i) deleting any and all PHI (within the meaning of HIPAA) stored in the Equipment, including all Patient IDs and Order Numbers; (ii) the loss of or damage to the Equipment including while it is in return transit; and (iii) the transportation expenses for the return of the Equipment.
10. **DISTRIBUTOR.** Customer, at its sole discretion, may select a Distributor of its choice. Quidel may delegate to Distributor any of Quidel's duties pertaining to distribution of Products or related activities under the Agreement. Customer acknowledges and consents to such delegation to Distributor. Any reference to Quidel in the Agreement that imparts on Quidel any duty that Quidel has delegated to Distributor shall be construed as a reference to Quidel or to Distributor. The terms and conditions contained in any invoice, sales acknowledgement, bill of lading, or other document supplied by Distributor to Customer shall (a) govern the relationship between Distributor and the Customer and (b) supersede any inconsistent terms and conditions of the Agreement and any addendum or exhibits attached hereto, with respect to the terms of shipment and payment for Products delivered to the Customer by the Distributor, which terms include, without limitation, acceptance, damage or loss in transit, credit terms, payment terms, and shipping terms, but exclude any warranty terms (which warranty terms shall be solely as expressly set forth in this Agreement). For the avoidance of doubt, pricing terms and purchase commitments for the Consumables and Equipment are as set forth in this Agreement.
11. **GRANT OF LIMITED SOFTWARE LICENSE.** To the extent applicable, Quidel grants Customer a limited, non-exclusive, non-transferable license to use software ("Software") during the Term. Customer shall (i) use Software only as an integrated part of a Product and shall not separate integrated Software from any Product; (ii) not translate, disassemble, decompile, reverse engineer, alter or modify the Software; (iii) not make any copies of the Software except one (1) copy for back-up purposes; and (iv) use Software only for during the Term. The Software is owned or licensed by Quidel and is protected by copyright and other laws. Customer shall not sell, assign, sublicense, transfer or disclose or permit access to the Software to a third party.
12. **MISCELLANEOUS.** Quidel shall not be liable for nonperformance or delays caused by a shortage of raw materials, manufacturing problems, delivery or labor problems, priorities, acts of regulatory agencies or judicial bodies, discontinuation of a product line, acts of God or third parties, infringement claims, or other causes beyond its reasonable control. Customer agrees that in such events Quidel may allocate Products among all purchasers as it deems reasonable, without liability. This Agreement, including any addenda or exhibits, contains the entire understanding with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements, proposals, and representations made between the parties. No changes to this Agreement shall be made or be binding upon either party unless made in writing and signed by both parties. No right created under this Agreement shall be waived unless expressly waived in writing and signed by the party possessing such right. This Agreement shall be governed by the laws of the state of California, without regard to any conflicts of law provision. The non-prevailing party in any claim arising from this Agreement shall pay the prevailing party reasonable attorneys' fees and expenses incurred in such claim. Customer agrees not to disclose the terms and conditions of this Agreement to any person except as required by law upon receipt of Quidel's prior written consent. Customer warrants that it will not, and will not permit or assist any other person or entity to, divulge, disclose, or in any way distribute or make use of Quidel trade secrets or intellectual property, and that it will not, and will not engage, permit or assist any other person or entity to, modify, reverse engineer or manufacture Products herein. If any law or court of competent jurisdiction makes any provision of the Agreement illegal, invalid or unenforceable, then the remaining terms and conditions shall remain in effect. Any notice between the parties shall be in writing and shall be deemed given only if delivered personally, by registered or certified mail, return receipt requested, or by overnight delivery to the Quidel Notice Address set forth in this Agreement, if given to Quidel, and the Customer Notice Address set forth in this Agreement, if given to Customer. Notices shall be deemed effective upon receipt. Either party may assign this Agreement in connection with the transfer or sale of a majority of its assets or stock from a merger, consolidation or change of control. Otherwise, Customer may not assign or transfer this Agreement, nor move, transfer, or assign the Equipment without Quidel's prior written consent.