



# AGREEMENT

**Date:** June 23, 2011

Page 1 of 2

**BCI Customer Number:** 25977

**Agreement Number:** 2365CA

**Customer Site #:** 224964

**Term (in Months):** 12

UNIVERSITY OF BRITISH COLUMBIA

**Expiration Date:** 12/31/2011

2125 EAST MALL NCE BUILDING

VANCOUVER BC V6T 1Z4

**Beckman Coulter Sales Representative:** MARK DALTON

## REAGENTS AND CONSUMABLES COMMITMENT

Part No	Description	Charge/Kit	Ship Schedule
A29151	CleanSEQ - 800 rxn - 96 well	\$571.00	
A63881	Agencourt AMPure XP - 60 ml	\$1,152.00	
A63882	Agencourt AMPure XP - 450 ml	\$5,289.00	
A29158	CleanSEQ - 384 - Starter kit	\$1,089.00	
A29154	CleanSEQ - 5k rxn - 96 well	\$3,015.00	
A29161	CleanSEQ - 50k Rxn	\$23,027.00	
A32645	Agencourt RNAdvance Tissue - Small	\$400.00	
A32782	Agencourt SPRIPlate 96R Super Magnet Plate	\$890.00	
A32649	Agencourt RNAdvance Tissue Kit - Medium	\$365.00	
A63987	Agencourt RNAClean XP 40 mL	\$755.00	
A66514	Agencourt RNAClean XP 450mL	\$7,814.00	
A29182	SPRIstand	\$266.00	

### REAGENT NOTES:

## 1. Definitions

All purchases by Customer under this agreement shall be at the prices set forth on the face of this Agreement. BCCI may change the prices set forth on this Agreement: (i) The price increase takes effect after the initial twelve (12) months of the Term are completed; and, (ii) Assuming the same mix and volume of Product Purchases as in the twelve (12) months preceding the change, in aggregate the effect of the change would not exceed the greater of: (a) the increase in the Consumer Price Index for the month of the change from the later of the effective date of this Agreement or the effective date of the last price change to Customer through the end of the month completed immediately before the notice of the change, or (v) the percentage increase in costs incurred by BCCI or its affiliates for raw materials and/or labor. BCCI may change the prices set forth on this Agreement for any reason, including, without limitation, Government action which prevents BCCI from making, or price change or continuing an price already in effect, BCCI may, on thirty (30) days' prior written notice, cancel any portion of this Agreement requiring BCCI to deliver the affected Product; the remainder of this Agreement shall remain in full force and effect.

### 3. The System

**B. License to Computer System and Software.** All computer software and/or programs, regardless of storage media, and all copies thereof, provided with the system and/or provided by BCCI from time to time during the term of this Agreement (jointly and severally the "Software") shall at all times be and remain the sole and exclusive property of BCCI. BCCI grants to Customer a non-exclusive license to use the Software for its internal business purposes only in conjunction with its operation of the System and only in accordance with BCCI's current operation and use instructions for the System. Customer shall not copy or permit others to copy the Software or any portion thereof. Customer shall return the Software to BCCI upon receipt from BCCI of a written demand to do so. The license granted to Customer under this Article 3.B. is granted herein expires at the end of the term of this Agreement and may be terminated earlier by BCCI: (a) upon BCCI's cancellation of this Agreement under Article 9, or (b) the Customer's breach of any provision of this Article 3.B. Customer may not transfer the license granted hereunder to any third party.

#### 4. Product Supply.

As indicated on the face of this Agreement, it is either a firm Customer Order for Products under the Firm Order provisions of Article 4.A., or is a metered reagent plan under the Metered Plan provisions of Article 4.B. A. Firm Order - BCCI agrees to sell and deliver to Customer and Customer agrees to purchase and take from BCCI during each year of this Agreement the quantities of Products specified on the face hereof. BCCI may conduct quarterly, semiannual or annual audits of Customer's terms of purchase. If Customer has failed to attend to its contractual obligations, BCCI may, at its discretion, suspend the formula and the formula pricing to apply in the future to match the expected volume based upon Customer's rate of purchase over the twelve (12) months preceding the adjustment. If Customer requests that Customer's obligation under these Firm Order provisions be amended to on-demand purchases, and if BCCI agrees in writing to that request, then, in addition to other price adjustment provisions under this Agreement, pricing may be adjusted by BCCI to reflect the cost of the goods being sold. Any price adjustments set forth in Article 2 shall not apply to price changes made pursuant to this Article.

**B. Metered Plan** - Customer agrees to and shall provide accurate and timely monthly meter readings to BCCI. Customer will be shipped quantities of Products each month based on the replenishment formulas set forth in BCCI's Metered System Instruction Manual and Customer's average volume of Tests as shown by the meter board in the test immediately preceding the month. Quantities of Products required by Customer for Tests in excess of such quantity shall be shipped by BCCI without charge and Customer shall pay only the monthly charge per Test for the Tests actually performed as shown by the meter board. Quantities of Products required by Customer in excess of BCCI's replenishment formulas for the number of Tests actually performed shall be ordered by Customer from BCCI and shall be supplied by BCCI at BCCI's then prevailing prices. Products shipped by BCCI to Customer in accordance with the replenishment formulas for Customer's average Test volume and not used, as shown by the meter board, shall be billed to Customer at BCCI's then prevailing prices. As used in this Article 4.B., "Test" means each measurement on a patient sample, control or calibration performed on the System.

**5. Billing.**

## 5. Billing.

Prices stated on the face of this Agreement do not include sales, use, transfer or other taxes, duties and other charges levied by any Government on the system or the Products or any other goods or services provided to Customer hereunder or on the sale, use or transfer thereof. Each invoice shall be paid in full by Customer within thirty (30) days from the date of BCCI's invoice. Customer's financial responsibility, BCCI may decline to make further deliveries hereunder except upon receipt of cash or additional security or on other terms satisfactory to BCCI. Failure of Customer to provide such additional security or comply with such other terms shall constitute a default under this Agreement. Customer shall pay a late payment charge, equal to one and one-half percent (1.5%) per month or the prime interest rate (whichever is higher) on the amount of the late payment(s). Customer shall pay any security deposit shown on the face of this Agreement upon the signing of this Agreement by Customer. Any security deposit may be applied, at BCCI's discretion, to any past due obligation of Customer and to the extent not so applied shall be returned to Customer, without interest at the expiration of this Agreement.

**6. Term.**

This Agreement commences on the Effective Date and continues for the full Term and then shall be automatically renewed for successive one (1) year periods at the same annual purchase rate unless at least sixty (60) days prior to the expiration of the initial or any renewal terms, either party provides the other with notice to terminate or expiration. If Customer intends to use the Products in conjunction with an instrument purchased, rented or leased from BCCI contemporaneously with Customer's signing of this Agreement and the instrument is to be shipped subsequent of the Effective Date, the first delivery of Products shall not begin until shipment of the instrument and the Term shall run from the day of instrument shipment.

#### 7. Force Majeure, Shortages.

BCCI will not be liable for default or delay, in whole or in part, in the performance of any of its obligations hereunder due to any cause beyond its control, including, by way of example and not limitation, Acts of God, accident, fire, flood, storm, earthquake, riot, war, sabotage, terrorism, pestilence, labor or other disturbance, strike, national defense requirement, governmental regulation, rule or order, or any other cause, whether or valid, which could materially affect, interrupt, delay or otherwise hinder the performance of its obligations hereunder. The availability of materials, labor or transportation under usual prices, terms and conditions, or any similar or different contingency which would make performance commercially impracticable. BCCI shall have no obligation to perform its obligations hereunder if such performance is prevented or hindered or eliminated from this Agreement without liability, but the Agreement shall otherwise remain in full force and effect. BCCI may during any period of shortage, whether or not due to any of the foregoing causes, allocate its available supply of products in any manner which it, in its sole discretion, deems appropriate among itself and its customers, including those customers not then under contract.

**8. Limited Warranty.**

BCCI warrants that all instruments, systems and accessories shall perform in all material respects for twelve (12) months from delivery as set forth in BCCI published product specifications (including any applicable Year 2000 Statement of Compliance) and operator manuals in effect at the time of delivery.

BCCI shall not be obligated under this warranty if the need for repairs or replacements directly or indirectly results from:

- (i) use or storage of the Products as specified by BCCI. BCCI shall not be responsible for results generated from or damage caused by Customer's use of third party products or supplies in conjunction with BCCI products or use of third party maintenance services. Repairs and replacements arising as a result of: (i) Customer's failure to properly perform the services and maintenance required in the Operator's Manual for an instrument, or
- (ii) use of non-genuine BCCI parts, or
- (iii) from Customer's negligence or negligent operation of any Product, instrument or accessory, or
- (iv) from alterations or modifications to any Product, instrument or accessory made by Customer, including Customer installation or use of software, are not provided by BCCI specifically for the instrument or accessory in which it is installed, shall be the responsibility of the Customer.

BCCI's tests and technical data regarding Products are based on tests which BCCI believes to be reliable and correct. However, the accuracy and completeness of such tests and the results thereof are not guaranteed and are not to be construed as a warranty, either express or implied. BCCI assumes no obligation or liability for the advice given or the results obtained, all such advice being given for information only.

The foregoing states the entire warranty obligation of BCCI and the exclusive remedy of Customer relating to the performance of the Products. THIS LIMITED WARRANTY IS PROVIDED IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, AND CONDITIONS, EXPRESS OR IMPLIED, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF MERCHANTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE BY BCCI.

9. Default.

"Customer Default" occurs: (a) if Customer fails to make any payment specified in this Agreement within thirty (30) days from the invoice date; (b) if Customer fails to purchase the Products in the quantity or for the full Term; (c) if Customer otherwise breaches any of the terms of this Agreement; (d) if Customer fails to provide the further information requested by BCCL's notice to cure; (d) if any credit or other information submitted by Customer to BCCL should be untrue in any material respect; (e) if Customer fails to provide the further information requested by BCCL's notice to cure; or (f) if Customer fails to provide service or to otherwise comply with any of its obligations under this Agreement. Such BCCL nonperformance shall not be construed as a breach of this Agreement and Customer expressly waives it as a defense in

Only BCCI. BCCI shall have all rights available to secured parties and the applicable provisions of personal property security legislation in the jurisdiction to which BCCI shipped the System. Upon occurrence of Customer Default, if requested by BCCI, Customer shall, at Customer's expense, promptly return the System to BCCI at its office in Mississauga, Ontario in the same condition as delivered to Customer, normal wear and tear excepted. Customer shall crate and protect the System to conform with BCCI's instructions and shall ship the System to BCCI at BCCI approved shipper. Alternatively, Customer shall permit BCCI and its agents to have access to repossess the System at Customer's expense. (3) BCCI may, at its option and without notice or demand, cancel this Agreement. In such event all amounts past due and to become due under this Agreement shall become immediately due and payable. Upon such cancellation BCCI may issue an invoice to Customer for an amount which shall be the lesser of: (x) the amount that Customer would have paid if the Products delivered had been purchased at the then-current list price, and (y) the amount of the net equity (net of sixty percent (60%) Contracted Remainder, "Contracted Remainder" means the remaining revenue that would have been earned by BCCI if Customer had fully performed its obligations.

In addition, if an instrument (including accessories, options and peripherals) has been provided under this agreement or an agreement cross referencing or cross referenced by this agreement, BCCI shall be entitled to be paid a portion of One Time Expenses. One Time Expenses shall include the cost of the instrument, the cost of the instrument being delivered, the cost of entering this agreement, and without limitation may include all training, installation, shipping and delivery expenses. The percentage of these One Time Expenses recoverable shall be calculated by dividing the Contracted Remainder by the total revenue that would be paid to the Contractor if the Contractor had not entered into this agreement. The Contractor shall be required to pay such invoice within thirty (30) days of receipt thereof. The foregoing does not preclude BCCI from seeking or enforcing any other right or remedy available to it under law or in equity and either serially or collectively. BCCI shall not be deemed to have waived any rights or remedies by continuing to perform under this agreement, or by a waiver of any term of this Agreement be deemed a waiver of future compliance.

**10. Limitation of Liability.**

BCCI shall not be liable for any special, direct, indirect, incidental or consequential damages, or for interruption of business or loss of profits or revenue. BCCI's liability under this Agreement or arising from the manufacture, installation, maintenance, repair or use of any System or Products covered by or furnished under this Agreement, whether in tort, contract or otherwise, is limited to an amount equal to the annual amount of the Agreement.

**11. Authorized Representative.**

Each of the parties expressly represents and warrants that the authorized representative signing this Agreement on their behalf has the requisite authority and has been authorized by the party.

12. Information.

Customer shall inform its employees, consultants and associates who will be using the System or Products, of BCCI's labelling literature and notices relative thereto which BCCI has or may hereafter provide to Customer.

**13. Patents.**

BCCI shall defend any suit or proceeding brought against Customer so far as it is based upon assertion that the Product furnished by BCCI under the Assignment constitutes a direct infringement of any United States or Canadian patent having a claim or claims covering the Product, or the use of such product, if notified promptly in writing and given authority, information and assistance (at BCCI's expense) for the defense of same, and BCCI shall pay all damages and costs awarded therein against Customer. If use of the Product is enjoined, BCCI shall, at its option and at its expense, either (1) procure for Customer the right to continue using the Product, (2) replace the same with a noninfringing product, or (3) modify it so it becomes noninfringing.

**14. Governing Law.**

This agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province where the "Ship To" address stated on the face hereof is located and the laws of Canada applicable therein (excluding any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction).

**15. Miscellaneous.**

No Product shall be returned to BCCI without a written BCCI Return Goods Authorization, and returns shall be subject to restocking charges. Any notice hereunder shall be served by registered or certified mail, return receipt requested. The provisions on the face of the agreement shall take precedence over the provisions on the reverse surface. This agreement constitutes the entire agreement of the parties relative to the subject matter hereof and supersedes all other agreements, negotiations, discussion, and understandings, written or oral, made or agreed to by the parties hereto. The parties hereby acknowledge and agree, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement. No subsequent waiver, alteration or modification of any term of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties. This Agreement expressly excludes the application of the Uniform Commercial Code, and all other laws, and modifications of the terms and conditions of this Agreement. Contrary or additional terms and conditions proposed by Customer's purchase order or other correspondence shall not bind BCCI. The rights and duties of Customer under this Agreement are not assignable or transferable without the express written permission of BCCI. This Agreement shall be governed in all respects by the laws of Canada, but without regard to any conflicts of law provisions. If any provisions of this Agreement shall be held to be invalid, void, or unenforceable, the validity of the provision hereof shall not be affected thereby. The illegal or invalid provisions shall be severable and all other provisions shall remain in full force and effect.

F4098.0 REAGENT AGREEMENT.