



**AGENDA**

**REGULAR MEETING OF THE BOARD OF DIRECTORS**

**Tuesday, May 2, 2023**

**6:00 PM**

**Modular C Classroom**

**600 N. Highland Springs Avenue, Banning, CA 92220**

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the Administration Office at (951) 769-2160. **Notification 48 hours prior to the meeting** will enable the Healthcare District to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

TAB

I. Call to Order

D. Tankersley, Chair

II. Public Comment

A five-minute limitation shall apply to each member of the public who wishes to address the Healthcare District Board of Directors on any matter under the subject jurisdiction of the Board. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, completion and/or future Board Action.) (PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.)

On behalf of the Healthcare District Board of Directors, we want you to know that the Board acknowledges the comments or concerns that you direct to this Board. While the Board may wish to occasionally respond immediately to questions or comments if appropriate, they often will instruct the Hospital CEO, or other Hospital Executive personnel, to do further research and report back to the Board prior to responding to any issues raised. If you have specific questions, you will receive a response either at the meeting or shortly thereafter. The Board wants to ensure that it is fully informed before responding, and so if your questions are not addressed during the meeting, this does not indicate a lack of interest on the Board’s part; a response will be forthcoming.

**NOTE: ALL MEMBERS OF THE SAN GORGONIO MEMORIAL HOSPITAL BOARD OF DIRECTORS ARE INVITED PARTICIPANTS AND MAY ADDRESS THE SAN GORGONIO MEMORIAL HEALTHCARE DISTRICT BOARD OF DIRECTORS AT ANY TIME DURING THIS MEETING.**

**OLD BUSINESS**

III. \* **Proposed Action - Approve Minutes**

All

- April 4, 2023, regular meeting

A

**NEW BUSINESS**

- IV. District Board Chair Report D. Tankersley verbal
- V. **\*Proposed Action - Approve February 2023 Financial Report** M. Kammer B  
▪ **ROLL CALL**  
• Informational: Measure A Funds Report – February 2023 C
- VI. Quarterly Common Area Maintenance (CAM) Fees Report M. Kammer D
- VII. **\* Proposed Action – Approval for San Geronio Memorial Hospital (Corporation) to establish an IntraFi ICS and CDARS Program with Pacific Premier Bank** D. Heckathorne E  
▪ **ROLL CALL**
- VIII. **\* Proposed Action – Approval to enter into an agreement with Sysmex America, Inc for acquisition of equipment, service, and reagents for the performance of diagnostic urinalysis, including the trade-in of the current equipment** J. Peleuses F  
▪ **ROLL CALL**
- IX. General Information
- \*\*\* ITEMS FOR DISCUSSION/APPROVAL IN CLOSED SESSION** D. Tankersley  
➤ Proposed Action – Approve Medical Staff Credentialing  
(*Health & Safety Code §32155; and Evidence Code §1157*)
- X. **ADJOURN TO CLOSED SESSION**  
**RECONVENE TO OPEN SESSION**
- \*\*\* REPORT ON ACTIONS TAKEN DURING CLOSED SESSION** D. Tankersley
- XI. Future Agenda Items
- XII. Adjournment D. Tankersley

**\*Action Required**

In accordance with The Brown Act, *Section 54957.5*, all public records relating to an agenda item on this agenda are available for public inspection at the time the document is distributed to all, or a majority of all, members of the Board. Such records shall be available at the Healthcare District Administration office located at 600 N. Highland Springs Avenue, Banning, CA 92220 during regular business hours, Monday through Friday, 8:00 am - 4:30 pm.

**Certification of Posting**

I certify that on April 28, 2023, I posted a copy of the foregoing agenda near the regular meeting

San Gorgonio Memorial Healthcare District  
Board of Directors Regular Meeting  
May 2, 2023

place of the Board of Directors of San Gorgonio Memorial Healthcare District, and on the San Gorgonio Memorial Hospital website, said time being at least 72 hours in advance of the regular meeting of the Board of Directors (*Government Code Section 54954.2*).

Executed at Banning, California on April 28, 2023

A handwritten signature in cursive script that reads "Ariel Whitley".

Ariel Whitley, Executive Assistant

**TAB A**

REGULAR MEETING OF THE  
SAN GORGONIO MEMORIAL HEALTHCARE DISTRICT  
BOARD OF DIRECTORS

April 4, 2023

The regular meeting of the San Gorgonio Memorial Hospital Board of Directors was held on Tuesday, April 4, 2023, in Modular C meeting room, 600 N. Highland Springs Avenue, Banning, California.

Members Present: Shannon McDougall, Randal Stevens, Lanny Swerdlow, Dennis Tankersley (Chair)

Members Absent: None

Required Hospital: Steve Barron (CEO), Angie Brady (CNO), John Peleuses (VP of Ancillary & Support Services), Annah Karam (CHRO), Margaret Kammer (Controller), Ariel Whitley (Executive Assistant), Dan Heckathorne (CFO), Karan P. Singh, MD (CMO)

AGENDA ITEM	DISCUSSION	ACTION / FOLLOW-UP								
<b>Call To Order</b>	Chair, Dennis Tankersley called the meeting to order at 6:16 pm.									
<b>Public Comment</b>	No public comment.									
<b>OLD BUSINESS</b>										
<b>Proposed Action - Approve Minutes March 7, 2023, regular meeting.</b>	Chair, Dennis Tankersley asked for any changes or corrections to the minutes of the March 7, 2023, regular meeting.  There were none.	<b>The minutes of the March 7, 2023, regular meeting will stand correct as presented.</b>								
<b>NEW BUSINESS</b>										
<b>Proposed Action – Approve the February 2023 Financial Report</b>	Margaret Kammer reviewed the February 2023 Finance Report. The report was provided as a handout.  BOARD MEMBER ROLL CALL: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">McDougall</td> <td style="width: 25%;">Yes</td> <td style="width: 25%;">Stevens</td> <td style="width: 25%;">Yes</td> </tr> <tr> <td>Swerdlow</td> <td>Yes</td> <td>Tankersley</td> <td>Yes</td> </tr> </table> Motion carried.	McDougall	Yes	Stevens	Yes	Swerdlow	Yes	Tankersley	Yes	<b>M.S.C., (Stevens/Swerdlow), the SGMHD Board of Directors approved the February 2023 Financial report as presented.</b>
McDougall	Yes	Stevens	Yes							
Swerdlow	Yes	Tankersley	Yes							

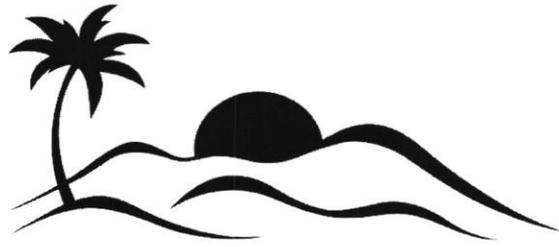
AGENDA ITEM	DISCUSSION	ACTION / FOLLOW-UP								
<ul style="list-style-type: none"> <li><b>Informational - Measure A expenditures – February 2023</b></li> </ul>	<p>Chair Tankersley noted that a copy of the Measure A funds and expenditures – February 2023 was included on the board tablets.</p>									
<p><b>Proposed Action – Provide authorization to declare existing Siemens Somatom Sensation 64 CT Scanner Model #8377520, Serial Number #55296 as surplus property and authorize the hospital to dispose of the unit as appropriate at fair market value.</b></p>	<p>As the hospital will be acquiring two new Canon CT Scanners for the Primary Stroke Center Project, we will not have a need for the existing Siemens Somatom Sensation 64 CT Scanner, serial number #55296.</p> <p>Therefore, it is being asked of the District to declare the above equipment, as surplus and authorize the hospital to dispose of the unit as appropriate.</p> <p>It was noted that approval is recommended by the Hospital Board.</p> <p>BOARD MEMBER ROLL CALL:</p> <table border="1" data-bbox="407 953 1214 1031"> <tr> <td>McDougall</td> <td>Yes</td> <td>Stevens</td> <td>Yes</td> </tr> <tr> <td>Swerdlow</td> <td>Yes</td> <td>Tankersley</td> <td>Yes</td> </tr> </table> <p>Motion carried.</p>	McDougall	Yes	Stevens	Yes	Swerdlow	Yes	Tankersley	Yes	<p><b>M.S.C., (Tankersley/Stevens) the SGMHD Board of Directors voted to provide authorization to declare existing Siemens Somatom Sensation 64 CT Scanner Model #8377520, Serial Number #55296 as surplus property and authorize the hospital to dispose of the unit as appropriate at fair market value as presented.</b></p>
McDougall	Yes	Stevens	Yes							
Swerdlow	Yes	Tankersley	Yes							
<p><b>Proposed Action – Approve Presentation of Women’s Clinic Midwifery Program Forecast and provide Authorization to Commence Project</b></p>	<p>San Gorgonio Memorial Hospital has an opportunity to establish a 1206d clinic to better serve the needs of women within the San Gorgonio Memorial Healthcare District</p> <p>A presentation was given by Dan Heckathorne and Rhonda Gunther to request authorization to commence the project.</p> <p>It was noted that approval is recommended by the Hospital Board.</p> <p>BOARD MEMBER ROLL CALL:</p> <table border="1" data-bbox="407 1619 1214 1696"> <tr> <td>McDougall</td> <td>Yes</td> <td>Stevens</td> <td>Yes</td> </tr> <tr> <td>Swerdlow</td> <td>Yes</td> <td>Tankersley</td> <td>Yes</td> </tr> </table> <p>Motion carried.</p>	McDougall	Yes	Stevens	Yes	Swerdlow	Yes	Tankersley	Yes	<p><b>M.S.C., (McDougall/Tankersley) the SGMHD Board of Directors voted to approve presentation of Women’s Clinic Midwifery Program Forecast and provide Authorization to Commence Project as presented.</b></p>
McDougall	Yes	Stevens	Yes							
Swerdlow	Yes	Tankersley	Yes							

AGENDA ITEM	DISCUSSION	ACTION / FOLLOW-UP								
<p><b>Proposed Action – Approve First Amendment to the Management Services Agreement between San Gorgonio Memorial Hospital and the San Gorgonio Memorial Healthcare District</b></p>	<p>The Healthcare District approved the first amendment to the Management Services Agreement with San Gorgonio Memorial Hospital.</p> <p>It was noted that approval is recommended by the Hospital Board.</p> <p>BOARD MEMBER ROLL CALL:</p> <table border="1" data-bbox="407 604 1214 682"> <tr> <td>McDougall</td> <td>Yes</td> <td>Stevens</td> <td>Yes</td> </tr> <tr> <td>Swerdlow</td> <td>Yes</td> <td>Tankersley</td> <td>Yes</td> </tr> </table> <p>Motion carried.</p>	McDougall	Yes	Stevens	Yes	Swerdlow	Yes	Tankersley	Yes	<p><b>M.S.C., (Stevens/Tankersley), the SGMHD Board of Directors approved the First Amendment to the Management Services Agreement between San Gorgonio Memorial Hospital and the San Gorgonio Memorial Healthcare District as presented.</b></p>
McDougall	Yes	Stevens	Yes							
Swerdlow	Yes	Tankersley	Yes							
<p><b>General Information</b></p>	<p>None.</p>									
<p><b>Adjourn to Closed Session</b></p>	<p>Chair, Tankersley reported the items to be reviewed and discussed and/or acted upon during Closed Session will be:</p> <ul style="list-style-type: none"> <li>➤ Proposed Action – Approve Medical Staff Credentialing.</li> </ul> <p>The meeting adjourned to Closed Session at 6:25 pm.</p>									
<p><b>Reconvene to Open Session</b></p>	<p>The meeting was reconvened to Open Session at 6:29 pm.</p> <p>At the request of Chair, Tankersley, Ariel Whitley reported on the actions taken/ information received during closed session as follows:</p> <ul style="list-style-type: none"> <li>➤ Approved Medical Staff Credentialing</li> </ul>									
<p><b>Future Agenda Items</b></p>	<p>None.</p>									
<p><b>Adjournment</b></p>	<p>The meeting was adjourned at 6:32 pm.</p>									

In accordance with The Brown Act, *Section 54957.5*, all reports and handouts discussed during this Open Session meeting are public records and are available for public inspection. These reports and/or handouts are available for review at the Healthcare District Administration office located at 600 N. Highland Springs Avenue, Banning, CA 92220 during regular business hours, Monday through Friday, 8:00 am - 4:30 pm.

Minutes respectfully submitted by Ariel Whitley, Executive Assistant

**TAB B**



**SAN GORGONIO**  
MEMORIAL HEALTHCARE  
DISTRICT

## **March 2023 Unaudited Financial Report**

**FY 2023**

*Presented by:*

**M. Kammer**

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**SAN GORGONIO MEMORIAL DISTRICT  
BANNING, CALIFORNIA**

3/31/23

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FY 2023

	ACT CUR 03/31/23	BUD CUR 03/31/23	PRIOR YR 03/31/22	ACT YTD 03/31/23	BUD YTD 03/31/23	Prior YTD 03/31/22
Gross Patient Revenue						
Inpatient Routine Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Inpatient Ancillary Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Outpatient Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Long Term Care Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Home Health Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Total Gross Patient Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Discounts and Allowances	\$0	\$0	\$0	\$0	\$0	\$0
Bad Debt Expense (Governmental Provic	\$0	\$0	\$0	\$0	\$0	\$0
Prior Year Settlements	\$0	\$0	\$0	\$0	\$0	\$0
Charity Care	\$0	\$0	\$0	\$0	\$0	\$0
Total Deductions From Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Net Patient Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Other Operating Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Clinic Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Tax Subsidies Measure D	\$246,994	\$246,994	\$233,333	\$2,222,944	\$2,222,945	\$1,866,664
Tax Subsidies Advelorum	\$154,500	\$154,500	\$150,000	\$1,390,500	\$1,390,500	\$1,200,000
Other Non-Operating Revenue - Grants	\$27,692	\$0	\$0	\$27,692	\$97,500	\$0
<b>Total</b>	<b>\$429,186</b>	<b>\$401,494</b>	<b>\$383,333</b>	<b>\$3,641,136</b>	<b>\$3,710,945</b>	<b>\$3,066,664</b>
EXPENSES						
Salaries and Wages	\$0	\$0	\$0	\$0	\$0	\$0
Fringe Benefits	\$0	\$0	\$0	\$0	\$0	\$0
Contract Labor	\$0	\$0	\$0	\$0	\$0	\$0
Physicians Fees	\$0	\$0	\$0	\$0	\$0	\$0
Purchased Services	\$0	\$134,079	\$82,611	\$149,032	\$63,938	\$209,158
Supply Expense	\$0	\$0	\$0	\$0	\$0	\$0
Utilities	\$1,294	\$3,616	\$1,119	\$15,444	\$21,000	\$18,133
Repairs and Maintenance	\$9,000	\$10,638	\$16,698	\$87,054	\$96,000	\$71,045
Insurance Expense	\$0	\$0	\$0	\$0	\$0	\$0
All Other Operating Expenses	\$0	\$8	\$0	\$159,379	\$150,000	\$0
IGT Expense	\$0	\$0	\$0	\$0	\$0	\$0
Leases and Rentals	\$0	\$0	\$0	\$0	\$0	\$0
Clinic Expenses	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$10,294</b>	<b>\$148,341</b>	<b>\$100,428</b>	<b>\$410,909</b>	<b>\$330,938</b>	<b>\$298,336</b>
<b>EBIDA</b>	<b>\$418,892</b>	<b>\$253,153</b>	<b>\$282,905</b>	<b>\$3,230,227</b>	<b>\$3,380,007</b>	<b>\$2,768,328</b>
Depreciation	\$406,450	\$406,450	\$504,865	\$3,801,641	\$4,950,392	\$4,038,920
Interest Expense (Non-Governmental Prc	\$1,160,032	\$556,436	\$359,993	\$4,182,706	\$4,217,279	\$2,920,632
<b>Total</b>	<b>\$1,566,482</b>	<b>\$962,886</b>	<b>\$864,858</b>	<b>\$7,984,347</b>	<b>\$9,167,672</b>	<b>\$6,959,552</b>
Contributions	\$2,030	\$1,015	\$8,638	\$1,402,262	\$4,200,698	\$57,374
Tax Subsidies for GO Bonds - M-A	\$627,353	\$627,353	\$613,966	\$5,646,178	\$5,538,637	\$5,525,691
<b>Total Non Operating Revenue/(Expens</b>	<b>\$629,383</b>	<b>\$628,368</b>	<b>\$622,604</b>	<b>\$7,048,440</b>	<b>\$9,739,335</b>	<b>\$5,583,065</b>
<b>NET INCOME</b>	<b>(\$518,207)</b>	<b>(\$81,365)</b>	<b>\$40,651</b>	<b>\$2,294,320</b>	<b>\$3,951,671</b>	<b>\$1,391,841</b>

Balance Sheet - Assets

SAN GORGONIO MEMORIAL HEALTHCARE DISTRICT  
BANNING, CALIFORNIA

3/31/23

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	Current Month 03/31/2023	Prior Month 02/28/2023	ASSETS Positive/ (Negative) Variance	Percentage Variance	Prior Year 06/30/2022
Current Assets -DISTRICT ONLY					\$0
Cash and Cash Equivalents	\$1,422,434	\$1,781,587	(\$359,153)	-2%	\$1,873,283
Gross Patient Accounts Receivable	\$0	\$0	\$0	0.00%	\$0
Less: Bad Debt and Allowance Reserve	\$0	\$0	\$0	0.00%	\$0
Net Patient Accounts Receivable	\$0	\$0	\$0	0.00%	\$0
Interest Receivable	\$5,414,365	\$4,385,518	\$1,028,847	906%	\$1,178,859
Other Receivables	\$660,465	\$660,485	(\$20)	0%	\$660,465
Inventories	\$0	\$0	\$0	0.00%	\$0
Prepaid Expenses	\$126,169	\$126,169	\$0	0%	\$426,159
Due From Third Party Payers	\$0	\$0	\$0	0.00%	\$0
Due From Affiliates/Related Organization	\$0	\$0	\$0	0.00%	\$0
Other Current Assets	\$0	\$0	\$0	0.00%	\$0
<b>Total Current Assets</b>	<b>\$7,623,433</b>	<b>\$6,953,759</b>	<b>\$669,674</b>	<b>33%</b>	<b>\$4,138,766</b>
Assets Whose Use is Limited					
Cash			\$0	0.00%	
Investments	\$10,889,203	\$11,212,210	(\$323,007)	1%	\$12,704,494
Bond Reserve/Debt Retirement Fund			\$0	0.00%	\$0
Trustee Held Funds			\$0	0.00%	\$0
Funded Depreciation			\$0	0.00%	\$0
Board Designated Funds			\$0	0.00%	\$0
Other Limited Use Assets	\$0	\$0	\$0	0.00%	\$0
<b>Total Limited Use Assets</b>	<b>\$10,889,203</b>	<b>\$11,212,210</b>	<b>(\$323,007)</b>	<b>1%</b>	<b>\$12,704,494</b>
Property, Plant, and Equipment					
Land and Land Improvements	\$4,828,182	\$4,828,182	\$0	0%	\$4,828,182
Building and Building Improvements	\$129,281,491	\$129,281,491	\$0	0%	\$129,281,561
Equipment	\$27,119,506	\$27,119,506	\$0	0%	\$26,856,789
Construction In Progress	\$3,080,099	\$2,405,542	\$674,557	0%	\$1,679,782
Capitalized Interest				0.00%	\$0
<b>Gross Property, Plant, and Equipment</b>	<b>\$164,309,278</b>	<b>\$163,634,721</b>	<b>\$674,557</b>	<b>0%</b>	<b>\$162,646,314</b>
Less: Accumulated Depreciation	(\$92,020,159)	(\$91,613,709)	(\$406,450)	1%	(\$89,145,667)
<b>Net Property, Plant, and Equipment</b>	<b>\$72,289,119</b>	<b>\$72,021,012</b>	<b>\$268,107</b>	<b>-1%</b>	<b>\$73,500,647</b>
Other Assets					
Unamortized Loan Costs	\$627,385	\$627,385	\$614,440	0.00%	\$614,440
Assets Held for Future Use				4%	
Investments in Subsidiary/Affiliated Org.	\$24,143,086	\$21,343,036	\$2,800,050	0.00%	\$0
Other					
<b>Total Other Assets</b>	<b>\$24,770,471</b>	<b>\$21,970,421</b>	<b>\$3,414,490</b>	<b>4%</b>	<b>\$614,440</b>
<b>TOTAL UNRESTRICTED ASSETS</b>	<b>\$115,572,226</b>	<b>\$112,157,402</b>	<b>\$3,414,824</b>	<b>1%</b>	<b>\$90,958,347</b>
Restricted Assets	\$0	\$0	\$0	0.00%	\$0
<b>TOTAL ASSETS</b>	<b>\$115,572,226</b>	<b>\$112,157,402</b>	<b>\$3,414,824</b>	<b>1%</b>	<b>\$90,958,347</b>

**Balance Sheet - Liabilities and Net Assets**  
**SAN GORGONIO MEMORIAL HEALTHCARE DISTRICT**  
**BANNING, CALIFORNIA**

**3/31/23**

	Cur Month 03/31/2023	Cur Month 02/02/2023	Positive/ (Negative) Variance	Percentage Variance	PRIOR YEAR 06/30/2022
<b>Current Liabilities</b>					
Accounts Payable	\$506,662	\$506,662	\$0	-22%	\$980,448
Notes and Loans Payable	\$0	\$0	\$0	0.00%	\$0
Accounts Payable- Construction	\$0	\$0	\$0	0.00%	\$0
Accrued Payroll Taxes	\$0	\$0	\$0	0.00%	\$0
Accrued Benefits	\$0	\$0	\$0	0.00%	\$0
Accrued Pension Expense (Current Portion)	\$0	\$0	\$0	0.00%	\$0
Other Accrued Expenses	\$0	\$0	\$0	0.00%	\$0
Accrued GO Bond Interest Payable	\$1,079,439	\$712,502	\$366,937	40%	\$2,526,756
Property Tax Payable	\$0	\$0	\$0	0.00%	\$0
Due to Third Party Payers	\$0	\$0	\$0	0.00%	\$0
Advances From Third Party Payers	\$0	\$0	\$0	0.00%	\$0
Current Portion of LTD (Bonds/Mortgages)	\$2,335,000	\$2,335,000	\$0	0%	\$2,335,000
Current Portion of LTD (Leases)	\$0	\$0	\$0	0.00%	\$0
Other Current Liabilities	\$0	\$0	\$0	0.00%	\$0
<b>Total Current Liabilities</b>	<b>\$3,921,101</b>	<b>\$3,554,164</b>	<b>\$366,937</b>	<b>-8%</b>	<b>\$5,842,204</b>
<b>Long Term Debt</b>					
Bonds/Mortgages Payable	\$99,543,964	\$99,543,964	\$0	0%	\$103,043,956
Revenue Bond Payable	\$7,252,548	\$8,952,115	(\$1,699,567)	0%	\$2,293,348
Current Portion	\$0	\$0	\$0	0.00%	\$0
<b>Total Long Term Debt</b>	<b>\$106,796,512</b>	<b>\$108,496,079</b>	<b>(\$1,699,567)</b>	<b>0%</b>	<b>\$105,337,304</b>
<b>Other Long Term Liabilities</b>					
Deferred Revenue			\$0	0.00%	\$0
Accrued Pension Expense (Net of Current)			\$0	0.00%	\$0
Other	\$0	\$0	\$0	0.00%	\$0
<b>Total Other Long Term Liabilities</b>			<b>\$0</b>	<b>0.00%</b>	<b>\$0</b>
<b>TOTAL LIABILITIES</b>	<b>\$110,717,613</b>	<b>\$112,050,243</b>	<b>(\$1,332,630)</b>	<b>0%</b>	<b>\$111,179,508</b>
<b>Net Assets:</b>					
Unrestricted Fund Balance	\$2,560,293	(\$3,093,912)	\$5,654,205	1%	(\$1,141,993)
Temporarily Restricted Fund Balance	\$0	\$0	\$0	0.00%	\$0
Restricted Fund Balance	\$0	\$0	\$0	0.00%	\$0
Net Revenue/(Expenses)	\$2,294,320	\$3,201,050	(\$906,730)	106%	\$2,216,045
<b>TOTAL NET ASSETS</b>	<b>\$4,854,613</b>	<b>\$107,138</b>	<b>\$4,747,475</b>	<b>2104%</b>	<b>\$1,074,052</b>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<b>\$115,572,226</b>	<b>\$112,157,381</b>	<b>\$3,414,845</b>	<b>-1%</b>	<b>\$112,253,560</b>
	\$0	\$0			\$0

**TAB C**

# San Gorgonio Memorial Healthcare District

## Measure A analysis of Project Funds Paid by General Category

3/31/2023

	Measure A		Current Month-Measure A	District Funds
	<u>Project-to-Date</u>		<u>3/31/2023</u>	<u>3/31/2023</u>
Computer Equipment	\$ 5,311,028	\$	-	
Radiology Equipment	\$ 1,526,641	\$	-	
Legal/Regulatory/Bonds	\$ 3,143,910	\$	-	
Architectural (HDR)-ALL PHASE 1 PROJ	\$ 11,756,851	\$	-	
Construction Management-ALL PHASE 1 F	\$ 12,875,601	\$	-	
Contractors 1-A (HELIPAD/COOLING TOW	\$ 7,814,103	\$	-	
Other	\$ 3,021,460	\$	-	
Contractors 1-B (CENTRAL PLANT)	\$ 20,800,201	\$	-	
Contractors 1-C (ED/ICU)	\$ 28,157,355	\$	-	
Contractors 1-E Dietary Remodel	\$ 5,225,946	\$	-	
Contractors 1-Medley Project	\$ 4,796,620	\$	-	
Previous Expenditures for Measure A-Phase 1	\$ 104,429,717	\$	-	
Contractors, Architect, Mgmt - 2-A Patient Facility prior to 9	\$ 7,015,575			
Expenditures prior to 9/01/14 all phases	\$ 111,445,293			
<b>Project expenditures using District Funds</b>				
TCU Conversion 0001	\$0.00	\$0.00	\$	108,612
Medical Records Conversion 0004	\$0.00	\$0.00	\$	13,618
Pharmacy Conversion 0005	\$0.00	\$0.00	\$	50,447
CIP Patient Care Facility-0008	\$0.00	\$0.00	\$	2,100
<b>Project Expenditures using Measure A funds</b>				
TCU Conversion 0001	\$ 539,852.53	\$0.00		
Medical Records Conversion 0004	\$0.00	\$0.00		
Pharmacy Conversion 0005	\$0.00	\$0.00		
CIP Patient Care Facility-0008	\$1,338,416.28	\$0.00		\$0.00
OR Electrical Conversion	\$0.00	\$0.00		\$39,751.00
Other Construction Costs	\$150,247.92	\$0.00		
Other Non-Construction Costs	\$193,576.42	\$0.00		\$5,955.22
<b>Total Expenditures</b>	\$ 113,667,386	\$	-	\$ 220,483

Measure A Project General Obligation Funds  
Statement of Funds Flows

PROCEEDS SUMMARY:	
Initial Project Fund transfer from sale of General Obligation Bonds 2006 A to FSA	25,200,349
Initial Project Fund Transfer from sale of General Obligation Bonds 2006 B (08/08/07)	24,876,964.91
Initial Project Fund from sale of General Obligation Bonds 2006 C (08/14/2009)	57,800,000
Planholder Checks project to date and refunds for overpayments	24,072
HDR Returned payments	139,979
Initial Proceeds	108,041,365
<b>Investment Income</b>	
FSA Inc. (Series 2006 A)	1,762,060
BB&T GIC (Series 2008 B)	1,461,176
Bank of Hemet Series A	1,001
City National Money Market	81
GE Capital (Series 2009 C)	2,638,823
Security Bank Money Market	39,402
Interest Income SUBTOTAL	5,902,543
<b>Total Proceeds Available for Measure A:</b>	<b>\$ 113,943,908</b>

Projected Interest by end of Project>	5,912,351
<b>Total Projected Proceeds Available for Measure A:</b>	<b>\$ 113,953,716</b>

FUND FLOWS:		
Total Measure A Funds Initial Proceeds (from above)		108,041,364.81
Add:	<u>Rate</u>	<u>Interest Income</u>
FSA Inc. (Series 2006 A), FY 07	5.27%	1,030,536.43
FSA Inc. (Series 2006 A), FY 08	5.27%	635,706.73
FSA Inc. (Series 2006 A), FY 09	5.27%	95,817.32
BB&T GIC (Series 2008 B) FY 09	4.94%	680,384
BB&T GIC (Series 2008 B) FY 10	4.94%	648,151
BB&T GIC (Series 2008 B) FY 11	4.94%	132,640
GE Capital (Series 2009 C) FY 10	1.75%	688,722
GE Capital (Series 2009 C) FY 11	1.75%	956,529
GE Capital (Series 2009 C) FY 12	1.75%	591,104.24
GE Capital (Series 2009 C) FY 13	1.75%	293,402.39
GE Capital (Series 2009 C) FY 14	1.75%	109,065.59
Bank of Hemet Series A		1,001
City National Money Market		81
Security Bank Construction funds		1,126
Security Bank Construction Money Market		38,275
Total Interest Income earned		<b>\$ 5,902,543</b>
	Project Expenditures (from above)	<b>\$ 113,667,386</b>
<b>Total Consolidated Funds available:</b>		<b>\$ 276,522.24</b>
	spent to date	100%

MEASURE A BALANCES:		
	Balances as of 03/31/2023	
Bank of Hemet Series A	4310	-
Security Bank of California Construction Fu	1812	5,990
Security Bank of California Money Market	2509	270,532
Total Balances		<b>\$ 276,522</b>
	VARIANCE	<b>\$ (0.00)</b>

**TAB D**





# TAB E

**San Gorgonio Memorial Hospital and San Gorgonio Memorial Health Care District**

**To: Finance Committee, Hospital and District Board of Directors**

**Agenda Item for April 25, 2023, Finance Committee and May 2, 2023, Board Meetings**

**Subject:**

Approval for San Gorgonio Memorial Hospital (the "Corporation") to establish an IntraFi ICS Demand Deposit Account and utilize the CDARS Program with Pacific Premier Bank.

**Key Issues:**

As the CFO and CEO reported during the Financial Reports presentation at the last Board meeting, the recent collapse of Silicon Valley Bank on March 10<sup>th</sup> and Signature Bank just a couple days later and the subsequent takeover of both banks by the Federal Deposit Insurance Corporation ("FDIC") has prompted staff to reevaluate the safety of the District's and the Corporation's deposits residing at commercial banking institutions.

To that end, we contacted Gary Hicks, Financial Advisor to the District and the Corporation to help us review these matters on behalf of both entities. The review included several Webex discussions and resultant emails which included Gary Hicks, Steve Barron, Dan Heckathorne, Margaret Kammer, and representatives with the respective banks used by the District and the Corporation.

Mr. Hicks then investigated these matters, and although this subject matter does not fall within his area of expertise, he nevertheless conducted his due diligence at our request. This included a review of relevant documents and a research of potential downsides and issues, including discussions with several of his professional colleagues, after which he developed the attached findings, conclusions, and recommendations for both the District and Corporation Boards.

A copy of Mr. Hicks' report is attached to this write-up.

**Recommended Action:**

To approve the San Gorgonio Memorial Hospital Corporation to establish and implement an IntraFi ICS Demand Deposit Account and CDARS Program with Pacific Premier Bank as outlined.

A copy of the Bank documents relating to this matter is attached.

## ***SAN GORGONIO MEMORIAL HEALTHCARE DISTRICT (the "District")***

**TO:** Steve Barron, Chief Executive Officer and Dan Heckathorne, Chief Financial Officer

**FROM:** Gary Hicks, President, G.L. Hicks Financial, LLC

**DATE:** April 18, 2023

**SUBJECT:** IntraFi ICS and CDARS Programs

### ***Background:***

Given the recent collapse of Silicon Valley Bank on March 10<sup>th</sup> and Signature Bank just a couple days later and the subsequent takeover of both banks by the Federal Deposit Insurance Corporation ("FDIC"), many healthcare providers are reevaluating the safety of their deposits residing at commercial banking institutions. As a result of your concerns caused by these recent bank failures and the related safety of District and Corporation deposits/reserves held at commercial banks, you requested that I conduct due diligence into the safety of District deposits and cash reserves with commercial banks where the District and the Corporation conduct their commercial banking relationships. Healthcare institutions have understandably been fearful that the federal government will not extend their FDIC insurance beyond the \$250,000 insurance limitation if other banks continue to fail.

### ***Bank Interviews:***

We do take comfort that the California Government Code requires all deposits of the District to be collateralized by Treasuries, Agencies and/or mortgages but the same security is not provided to the Corporation. As such, we interviewed all three of the commercial banks where the District and the Corporation have depository relationships (Bank of Hemet/HCN Bank, City National Bank and Pacific Premier Bank). These interviews were conducted with the purpose of determining the type and level of collateral provided by these banking institutions, the frequency of determining the fair market value of collateral provided and to evaluate other safety measures and options available to the District and the Corporation to ensure the safety of reserves in the event of a failure of any of these banks. During our discussions with Pacific Premier Bank, which bank holds deposits for both the District and San Gorgonio Memorial Hospital Corporation (the "Corporation" and combined with the District, the "District/Corporation"), the IntraFi ICS (insured cash sweep) and CDARS (certificate of deposit account registry service) programs were offered as possible solutions to improving the safety of funds deposited with Pacific Premier Bank.

### ***IntraFi Network, LLC:***

IntraFi provides deposit placement services that afford depositors access to FDIC insurance on its deposits that exceed the \$250,000 limit while keeping its relationship with Pacific Premier Bank. These deposit placement services increased in demand during the 2008-09 financial crisis when similar fears surfaced in the banking industry. IntraFi programs are structured to spread deposits made to a participating bank (including Pacific Premier Bank) across a network of FDIC-insured banks that are members of IntraFi's network (includes approximately 3,000 U.S. financial institutions, including approximately 35% of all commercial banks in the U.S.), herein referred to as "Destination Institutions."

The IntraFi programs allow depositors to place funds into three different accounts:

- ICS Demand Deposit Accounts (“DDAs”) using the demand option (no limit on withdrawals),
- ICS Money Market Deposit Accounts (“MMDAs”) using the savings option (similar to the DDAs but only allows a maximum of six withdrawals per month), and
- Certificates of Deposit using the CDARS program (terms from 4 weeks to 3 years).

The IntraFi ICS program has been in existence for approximately 12 years and the CDARS program has been in existence for approximately 20 years. IntraFi was the first provider of these reciprocal deposit programs and is today the largest provider of such programs. A reciprocal deposit occurs when a Destination Institution receives a deposit through a deposit placement network, like IntraFi, in return for placing a matching deposit amount at the bank making the placement. Deposits under any one of the three programs listed above is deposited into multiple reciprocal deposit accounts so that no one Destination Institution holds more than the \$250,000 limit for FDIC insurance. Although your deposits are placed with Pacific Premier Bank and your banking relationship continues to be managed by representatives of Pacific Premier Bank, your deposits are, through the IntraFi program, placed into multiple FDIC insured banking institutions throughout the United States in accordance with a Deposit Placement Agreement (see below) to ensure that your total deposits are always covered by FDIC insurance without the administrative necessity for the District/Corporation to manage these multiple deposit accounts. The recording of the deposits will occur in a manner that permits the deposit account to be FDIC-insured to the same extent as if it were recorded on the records of the Destination Institution in your name. The District/Corporation will receive one monthly statement from Pacific Premier Bank detailing account activity but the reciprocal deposit is the sole obligation of the Destination Institution and that deposit is covered by the FDIC insurance program.

***IntraFi Network Deposit Placement Agreement and Custodial Agreement:***

Through the IntraFi Network Deposit Placement Agreement and Custodial Agreement (the “Agreements”) relating to both DDAs and MMDAs, IntraFi places deposits with FDIC-insured banking institutions that are members of its network of commercial banks so that not more than \$250,000 is deposited with any one Destination Institution. The Agreements authorizes Pacific Premier Bank, through its IntraFi relationship, to invest and withdraw funds pursuant to the direction of the District/Corporation. Pacific Premier Bank acts as your agent in placing deposits with selected Destination Institutions and also as your custodian for the deposit accounts. The District/Corporation discloses any existing banking relationships where it maintains a depository account and directs deposited funds to be placed in either a DDA or MMDA account, or both, and/or to invest into specified longer-term Certificates of Deposit (“CDs”) in the CDARS program. However, the CDARS program has some drawbacks, the greatest of which is restricted liquidity and penalties will apply if CDs are sold prior to their maturity dates (maturity dates generally run from 4 weeks to 3 years). Also, the maturities for purchased CDs are somewhat limited and the rate of return may also be less than what is available when choosing CDs directly with commercial banks on a competitive basis. Pacific Premier Bank sets the interest rates on all ICS deposit accounts and on CDs purchased through the CDARS program.

***Findings:***

In reviewing online searches relating to the IntraFi program, I wasn’t able to locate any negative articles or complaints regarding IntraFi or their various reciprocal deposit programs. I did review several positive articles, including one recent alert in the National Law Review, concerning the IntraFi program and it is endorsed by the American Bankers Association through its due diligence efforts and findings.

My review of the Agreements did not disclose any problems or concerns with the Agreements.

***Recommendations:***

***Bank of Hemet/HCN Bank:*** We have received confirmation from HCN Bank that all District accounts and related funds deposited with HCN Bank are fully collateralized pursuant to the Local Agency Security Program administered by the State of California Department of Financial Protection and Innovation. These District accounts include five separate accounts, which accounts are collateralized with U.S. Government Treasury and Agency securities in the amounts required by the Local Agency Security Program and which collateral levels are monitored as frequently as weekly to ensure that all deposits under this program are always fully insured. As far as the Hospital Corporation is concerned, they have only one account at HCN Bank, which account has at most \$120,000 in it and therefore is fully covered by existing FDIC insurance and therefore is safe. It also appears as if HCN Bank is well managed and is financially sound. Consequently, we believe that no action is needed with the accounts at HCN Bank so long as the Hospital Corporation account is always maintained at a level of no greater than \$250,000.

***City National Bank:*** The District does not have any accounts at City National Bank. The Hospital Corporation has only one account at City National Bank and that account receives Medicare payments that total approximately \$30,000 per month. When the balance in this account increases to \$100,000, funds in this account are transferred to Pacific Premier Bank. Since the balance of the one depository account at City National Bank never approaches \$250,000, it is fully covered by existing FDIC insurance and therefore is safe. It also appears as if City National Bank is well managed and is financially sound. Consequently, we believe that no action is needed with the accounts at City National Bank so long as the Hospital Corporation account is always maintained at a level of no greater than \$250,000.

***Pacific Premier Bank:*** The bulk of the Hospital Corporation's daily deposits and balances are deposited with Pacific Premier Bank in the Hospital's general checking account. On a monthly basis, a total of approximately \$6,000,000 is deposited into the Hospital Corporation's general account and this same account is used to pay for the vast majority of the Hospital's bills. Its current balance is approximately \$7,000,000. The Hospital Corporation also has other depository accounts at Pacific Premier Bank that are used for designated restricted grant funds and fundraising donations (current balance of approximately \$65,000), a payroll account that retains minimal amounts except for payroll weeks (current balance of approximately \$660,000) and a payroll flexible spending account which receives the payroll deductions for the Hospital's flexible spending program, which account balance never exceeds \$40,000 (current balance is approximately \$20,000). In addition, the District also maintains two accounts at Pacific Premier Bank, which accounts hold Measure A funds in the approximate amount of \$275,000 that are expected to be expended soon on eligible project expenditures for Hospital facility improvements or equipment. This account should be drawn down to zero and closed within the next couple of months. One final District account held at Pacific Premier Bank is the District's general checking account where checks are issued to pay for District related expenses (current balance of approximately \$155,000). It also appears as if Pacific Premier Bank is well managed and is financially sound. Consequently, we believe that no action is needed with the District accounts at Pacific Premier Bank. However, we believe that the Hospital Corporation's general checking and payroll accounts at Pacific Premier Bank should be converted to ICS Demand Deposit Accounts through the IntraFi Network. As indicated above, future deposits in these accounts would then be spread among the IntraFi network of Destination Institutions in accordance with a Deposit Placement Agreement and Custodial Agreement. The recording of the deposits will occur in a manner that permits the deposit accounts to be FDIC-insured to the same extent as if it were recorded on the records of the Destination Institution in your name. The Corporation should also consider utilizing the CDARS program for deposits that are expected to not require expenditure for at least four weeks from the date of its deposit.



# ICS & CDARS Overview



PACIFIC PREMIER BANK®

Max Damm  
March 2023

IntraFi has built the largest network of its kind over 20 years with financial institutions of all types and sizes.

**Recognized & Trusted For Over 20 Years Throughout the Industry**

Largest Deposit Network

**~3,000**  
U.S. financial institutions as members of the network

Broad National Reach

**10**  
largest U.S. banks by deposits<sup>1</sup>

Working with FIs of All Types and Sizes...

**72%**  
of CDFI<sup>5</sup> banks of African American banks by assets

**97**  
of the top 100 banks<sup>1</sup>

**>85%**  
of Native American banks by assets

**>\$500bn**  
deposits currently placed using IntraFi services

**2,500+**  
community Banks<sup>2</sup>

**>80%**  
of Asian American banks by assets

**>80%**  
of Hispanic Banks

Note: Includes members of one or more services of IntraFi. As of June 30, 2022, unless otherwise noted. [1] Largest U.S. banks by deposits sourced from S&P Global U.S. 2021 Deposit Market Share analysis. [2] Bank charters with less than \$10 billion in assets. [3] By number of bank charters as of June 30, 2022. [4] Includes well-capitalized CDFI banks or thrifts (sourced from www.cdfifund.gov), Minority Depository Institutions (sourced from the FDIC website) and women-owned banks. [5] Designation given by the CDFI Fund to specialized organizations that provide financial services in low-income communities and to people who lack access to financing.



# Tested, Trusted Services

**ICS and CDARS enable members of IntraFi's network of financial institutions to grow franchise value and increase profitability by offering customers access to multi-million-dollar FDIC insurance through a single relationship.**

With ICS, your customers can place their funds into demand deposit accounts (using the demand option), money market deposit accounts (using the savings option), or both. With CDARS, your customers can place their funds into CDs.

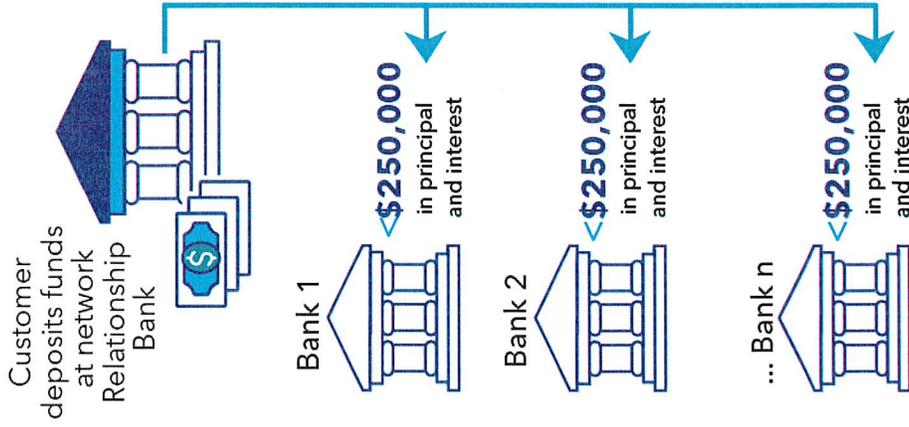
## **ICS and CDARS are tested, trusted services**

- Utilized by thousands of banks across the nation, including a majority of U.S. banks
- Available from IntraFi, the inventor and industry's largest provider of reciprocal deposits, and a company that does not compete with banks for depositors;
- Endorsed by the American Bankers Association, which makes due diligence reports available.



Use of IntraFi's deposit placement services is subject to the terms, conditions, and disclosures in the applicable program agreements, including the IntraFi Participating Institution Agreement. Limits apply and customer eligibility criteria may apply. A list identifying IntraFi network banks may be found at <https://www.intrafi.com/network-banks>. The depositor may exclude particular insured depository institutions from eligibility to receive the depositor's funds. IntraFi, ICS, CDARS, One-Way Sell, and The Power of Many are registered service marks, and the IntraFi hexagon is a service mark, of IntraFi Network LLC.





## How ICS and CDARS Work

Banks that offer ICS and CDARS are members of IntraFi's network of banks. When your bank places a customer's deposit using either service, that deposit is divided into amounts under the standard FDIC insurance maximum of \$250,000 and placed in deposit accounts at other network banks.<sup>1</sup>

By working directly with just one bank, yours, the customer can access FDIC coverage from many.

And the customer enjoys the convenience of working with and receiving communications and statements (only one monthly statement per service) from your bank—a bank they know and trust.

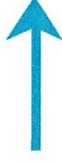
[1] Deposits are placed in demand deposit accounts when using the ICS demand option, money market deposit accounts when using the ICS savings option, or CDs when using the CDARS.





Your bank establishes the interest rates for funds it places through ICS and CDARS

- Confidential information is protected
- Customer communicates only with your bank's service team
- Customer receives one monthly statement per service from your bank



Your bank owns the customer relationship

# Retain Control with ICS and CDARS



# Customer Experience – Five Easy Steps



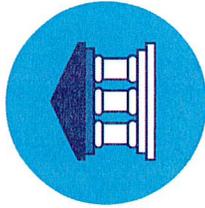
**Sign Agreements**

Customers sign the Deposit Placement Agreement (DPA) and a custodial agreement.



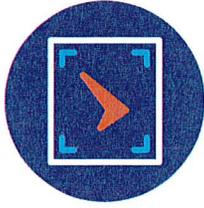
**Fund Account**

With ICS, the customer identifies an existing transaction account (or sets up a new one) to be used with each option. With CDARS, the customer simply deposits money with your bank.



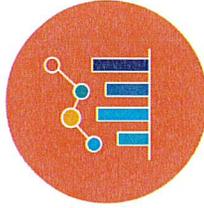
**Place Funds**

Funds are placed into deposit accounts at other network institutions in accordance with the applicable DPA.<sup>1</sup>



**Receive Confirmation**

ICS and CDARS provide transparent reporting. With ICS, the customer can check balances and see where funds are at all times using easily accessible online tools. With CDARS, the customer receives confirmation of his/her CDs from your bank.



**Receive Account Statements**

The customer receives one monthly statement detailing account activity. There is one statement for ICS and one statement for CDARS.

[1] When using ICS, the customer's funds are placed into demand deposit accounts, money market deposit accounts, or both at other banks that are members of IntraFi's network. When using CDARS, the customer's funds are placed into CDs issued by other network member banks.



# One Monthly Statement Per Option

- Each month, the customer receives:
- One statement detailing ICS account activity
- One statement detailing CDARS account activity.

**ICS Monthly Statement**  
 12/31/2018  
 274  
 12/31/2018  
 274  
 12/31/2018  
 274

**CDARS Customer Statement**  
 12/31/2018  
 274  
 12/31/2018  
 274  
 12/31/2018  
 274

**DETAILED ACCOUNT OVERVIEW**  
 12/31/2018  
 274  
 12/31/2018  
 274  
 12/31/2018  
 274

ICS demand and savings-  
sample monthly statement

CDARS - sample monthly statement



# Depositor Control Panel

- Online Depositor Control Panel (DCP) provides your customers with 24/7 access to their ICS account details
- Obtain account statements, if applicable
- Grant account access to multiple individuals
- Check balances and view transaction history
- Review and manage proposed placements

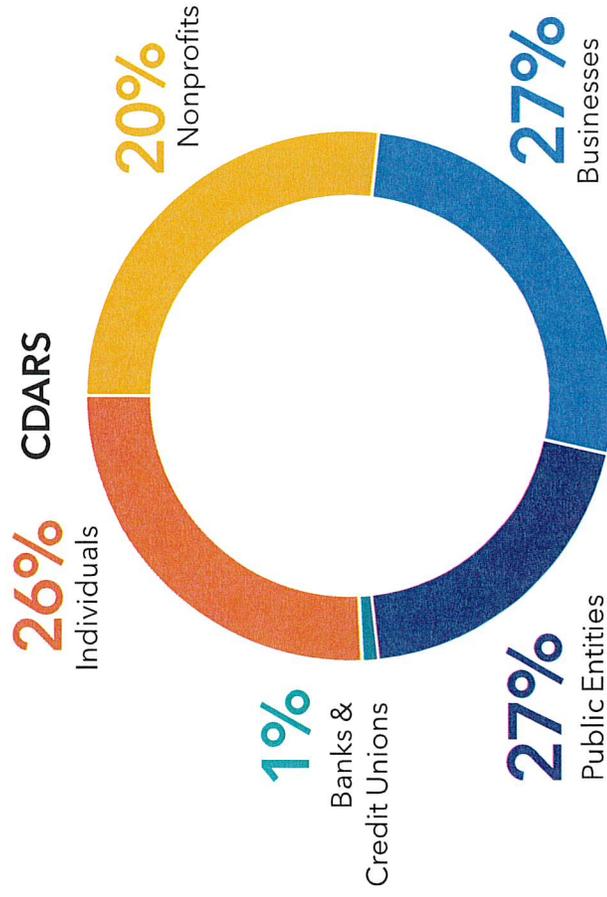
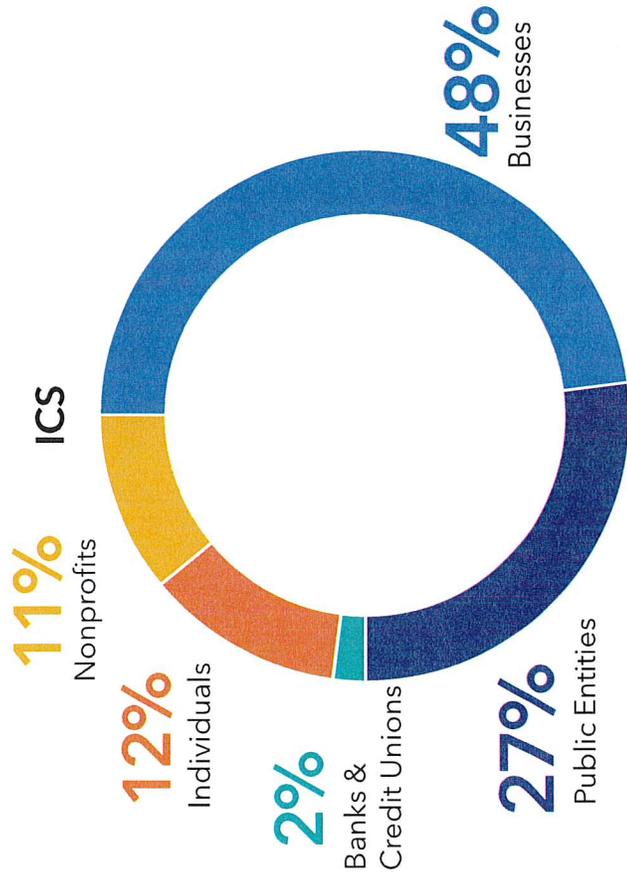
The screenshot shows the Depositor Control Panel for Sample Bank. At the top, there is a navigation bar with the Depositor Control Panel logo, Sample Bank name, and a user profile icon for 'SAMPLE CORPORATION'. Below this is a 'Welcome to the Depositor Control Panel' message, followed by a summary of account balances: Total Principal Balance of \$92,352,706.85 and Total Accrued Interest of \$12,174.96. A 'Statements' section is also visible. The main content area is titled 'My Accounts' and includes a table of accounts with columns for Account Title, Institution Transaction Account No., ICS Deposit Option, Program Withdrawals, Rate %, Principal Balance, and Accrued Interest. Two accounts are listed: 'Sample Account Title 1' (Savings, 1.60% rate, \$86,352,706.85 principal) and 'Sample Account Title 2' (Demand, N/A rate, \$5,000,000.00 principal). A 'Filter' button is located above the table. At the bottom right, the website URL 'www.DepositorControl.com' is displayed.

Account Title	Institution Transaction Account No.	ICS Deposit Option	Program Withdrawals	Rate %	Principal Balance	Accrued Interest
Sample Account Title 1	*****004	Savings	1 of 6	1.60	\$86,352,706.85	\$11,027.21
Sample Account Title 2	*****008	Demand	N/A	1.55	\$5,000,000.00	\$1,147.75



# Attract and Retain Safety-Conscious Customers

PRINCIPAL BALANCE BY CUSTOMER TYPE



[1] As of September 30, 2022



# ICS and CDARS – Grow Franchise Value

## Average Holdings Per Customer<sup>3</sup>

Customer Type	ICS	CDARS
Banks and Credit Unions	\$6,900,000	\$3,900,000
Public Entities	\$3,600,000	\$3,900,000
Individuals	\$3,700,000	\$1,100,000
Corporations	\$2,600,000	\$1,900,000
Partnerships	\$2,100,000	\$2,100,000
Estates and Trusts	\$1,600,000	\$1,500,000
Nonprofits	\$1,200,000	\$950,000
Associations and Clubs	\$900,000	\$1,100,000
<b>Average Holdings Across All Customer Types</b>	<b>\$2,300,000</b>	<b>\$1,600,000</b>

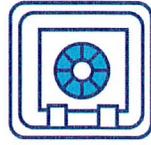
- Balances associated with ICS and CDARS tend to be large and “sticky,” thereby lowering customer acquisition costs and providing more opportunities for cross-selling.
- With the CDARS, deposits reinvest at a rate of approximately 80%.<sup>1</sup>
- With ICS, banks typically see less than 3% of reciprocal accounts liquidated in any given month, even as total accounts and balances steadily increase.<sup>2</sup>

[1] IntraFi calculates the reinvestment rate for CDARS as the percentage of the aggregate balance of deposits reinvested within 28 days of maturity. Calculated for each of the 12 months preceding June 2020. The ICS reciprocal account closure rate for a given month is the number of reciprocal accounts closed during the month as a percentage of the total number of reciprocal accounts at the beginning of the month. The number of reciprocal accounts closed during the month is the number of non-zero-balance reciprocal accounts withdrawn to zero dollars during the month and not returned to a non-zero-balance during the month or the subsequent two months.

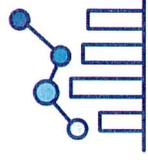
[2] As of September 30, 2022.



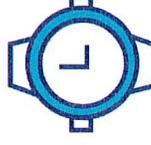
# ICS and CDARS Customer Benefits



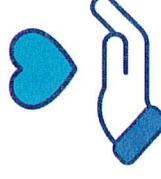
**Peace of mind**  
associated with access  
to multi-million-dollar  
FDIC insurance  
through a single bank  
(yours!)



**Potential to earn an  
attractive return –**  
customers earn interest at a  
rate set by your bank; ICS  
and CDARS rates often  
compare favorably to  
Treasuries and government  
money market mutual  
funds (MMMFs) and avoid  
the risks associated with  
prime MMMFs



**Convenience**  
of eliminating ongoing  
collateral-tracking  
requirements, having  
uninsured deposits to  
footnote in financial  
statements, and avoiding  
the need to maintain  
relationships at different  
institutions



**Opportunity to  
support their  
community**  
by keeping the  
full value of their  
funds local.<sup>1</sup>

[1] When deposited funds are exchanged on a dollar-for-dollar basis with other banks in the IntraFi network, your bank can use the full amount of a deposit placed through IntraFi Network Deposits for local lending, satisfying some depositors' local investment goals or mandates.



Contact me at:

**Max Damm, Managing Director - Pacific**

*Based in Orange County, CA*

(703) 292-3361

[mdamm@intrafi.com](mailto:mdamm@intrafi.com)

Contact Information





Thank You.

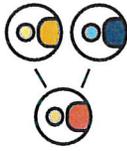
# Appendix



## Your IntraFi® Sales Partner

**Max Damm**  
Managing Director

IntraFi  
(703) 292-3361  
[mdamm@intrafi.com](mailto:mdamm@intrafi.com)



### Partner with Max

Max is your institution's dedicated IntraFi Network<sup>SM</sup> sales partner.

You don't need to go at it alone. Sales support, marketing support, and operational support are at your fingertips.

Max can work with your institution's sales team to help ensure their understanding of ICS and CDARS to assist them in identifying, selling, and closing deals with your customers.

Contact Max to get started.



### Let's Work Together

Max can support your institution's sales team in a variety of ways to meet their individual and company goals.

- ★ Joint sales calls – One of the most powerful tools in your toolbox!
- Education and sales training
- Assistance with prospect identification, review, and analysis
- Proposal development
- Marketing material advice
- Pricing strategy
- CPA training arrangement (1 hour CPE credit)
- Lunch-and-learn and other customer-facing events
- Joint speaking opportunities set up



### See the Results

#### Another Member of the Team

A bank's relationship manager invited Max to join a meeting with a large potential business customer who had existing accounts with a competitor. Max and the bank's sales representatives explained the benefits of working with the bank and having access to ICS and CDARS. The bank won the customer relationship, including the customer's deposits and lending business.

#### Partner in Education

A bank asked Max to co-present to fiduciaries' and attorneys' associations. Together, they held webinars with several local associations and raised awareness of the unique products the bank offered, including ICS & CDARS. The webinars resulted in dozens of leads and new business opportunities for the bank.

#### CPA Training and CPE Credit

Max worked with a community bank to host a lunch-and-learn event about how to access to multi-million-dollar FDIC insurance. CPAs earned one hour of CPE credit and the bank acquired new contacts.



### Get to Know Max

Max has over 23 years of experience in financial services, including working at national and community banks. He currently serves as the Managing Director for your region. Max works with banks on C-level deposit strategy, liquidity management, new product rollout, sales trainings, end-depositor education, and more.

Max earned his undergraduate degrees in International Studies and Spanish/Latin American Studies at American University in Washington, D.C.

# Our Advantage

## What else differentiates IntraFi

- ✓ Was built around banks and is committed to serving as a partner to banks
- ✓ Invented reciprocal deposits and holds 20 patents supporting its various offerings
- ✓ Is the #1 provider of FDIC-insured deposit solutions
- ✓ Offers a wide range of solutions—an all-weather portfolio—to help financial institutions manage their balance sheets through different environments (e.g., liquid or nonliquid positions, high or low interest-rate periods, rising or falling interest rates, stable or volatile environments, periods of economic growth or recession) and flights to safety
- ✓ Has been thoroughly tested and embraced by thousands of financial institutions across the nation, including more than half of all U.S. banks
- ✓ Has built the largest bank network of its kind, enabling it to offer breadth, depth, and stability, along with the largest capacity, of any competing provider



# Our Advantage

## What else differentiates IntraFi

- ✓ Has the scale to be a strategic partner for the largest banks' funding and capital management needs—or the smallest
- ✓ Doesn't disintermediate its customers—i.e., does not compete for depositors/investors
- ✓ Never has possession of customer funds
- ✓ Makes due diligence materials readily available, including service-specific due diligence reports published by the American Bankers Association
- ✓ Has a leadership team that comes from a variety of different backgrounds—backgrounds that have fostered deep regulatory and banking industry expertise, as well as specialized knowledge from fields like technology and finance



## IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement

You, the undersigned, enter into this IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement (“*Agreement*”) with the following financial institution (“*we*” or “*us*”):

Pacific Premier Bank

This Agreement states the terms and conditions on which we will endeavor to place deposits for you at other financial institutions through the DDA-MMDA Option of IntraFi<sup>SM</sup> Network Deposits<sup>SM</sup>. IntraFi Network Deposits is a product of IntraFi Network LLC (“*IntraFi*”) that encompasses services for placing deposits at depository institutions.

This Agreement is an amended version of the ICS Deposit Placement Agreement (“*ICS DPA*”). The DDA-MMDA Option of IntraFi Network Deposits (“*DDA-MMDA Option*”) is the deposit placement functionality formerly known as part of ICS<sup>®</sup>, the Insured Cash Sweep<sup>®</sup> service. IntraFi is the entity formerly known as Promontory Interfinancial Network, LLC.

During a branding transition period, you may see references to ICS on statements or other documents. These references are to the DDA-MMDA Option of IntraFi Network Deposits.

### 1. Deposit Placement

#### 1.1. IntraFi Network Deposits DDA-MMDA Option

(a) **Schedule 1** describes the procedure by which we will place deposits for you through the DDA-MMDA Option. **Schedule 2** includes descriptions of the account type and placement feature that we will use.

(b) Each depository institution at which we place deposits for you through the DDA-MMDA Option (“*Destination Institution*”) will be one at which deposit accounts are insured by the Federal Deposit Insurance Corporation (“*FDIC*”) up to the FDIC standard maximum deposit insurance amount (“*SMDIA*”) of \$250,000.

(c) Subject to the terms and conditions of this Agreement, when we place deposits in a deposit account at a Destination Institution for your funds placed through the DDA-MMDA Option (“*Deposit Account*”), the amount of our outstanding placements for you at the Destination Institution through the DDA-MMDA Option and through the CD Option of IntraFi Network Deposits, which is the deposit placement functionality formerly known as part of CDARS<sup>®</sup>, the Certificate of Deposit Account Registry Service<sup>®</sup>, will not exceed \$250,000.

(d) The Bank of New York Mellon (“*BNY Mellon*”) provides services that support deposit placement through the DDA-MMDA Option. BNY Mellon’s services include acting as our sub-custodian and settlement agent.

(e) You must be capable of using, and you agree to use, the Depositor Control Panel (“*DCP*”), an online tool, to review provisional allocations of deposits and for other purposes. You also agree to receive notices that may be posted on the DCP or sent to you by email.

### 1.2. Deposit Accounts

(a) Deposits that we place for you in Deposit Accounts will be “deposits,” as defined by federal law, at the Destination Institutions.

(b) Each Deposit Account, including the principal balance and the accrued interest, will be a deposit obligation solely of the Destination Institution at which it is held. It will not be a deposit obligation of us or of IntraFi, BNY Mellon, or any other person or entity.

### 2. Your Relationship With Us

#### 2.1. Agency and Custodial Relationship

(a) We will act as your agent in placing deposits for you through the DDA-MMDA Option. Under a separate agreement with you that grants us custodial powers (“*Custodial Agreement*”), we will also act as your custodian for the Deposit Accounts.

(b) Each Deposit Account will be recorded (i) on the records of the Destination Institution in the name of BNY Mellon, as our sub-custodian, (ii) on the records of BNY Mellon in our name, as your custodian, and (iii) on our records in your name. The recording will occur in a manner that permits the Deposit Account to be FDIC-insured to the same extent as if it were recorded on the records of Destination Institution in your name.

(c) For purposes of Article 8 of the Uniform Commercial Code, we will act as your securities intermediary for, and will treat as financial assets, the Deposit Accounts and all your security entitlements and

other related interests and assets with respect to the Deposit Accounts, and we will treat you as entitled to exercise the rights that constitute the Deposit Accounts.

(d) All interests that we hold for the Deposit Accounts will be held by us only as your securities intermediary and will not be our property. You will be the owner of the funds in the Deposit Accounts and any interest on those funds.

## 2.2. Termination of Custodial Relationship

(a) Either you or we may terminate the custodial relationship between you and us at any time. You may not transfer the Deposit Accounts to another custodian, but you may dismiss us as your custodian for a Deposit Account and request that it be recorded on the records of the Destination Institution in your name.

(b) We will endeavor to cause any request from you pursuant to Section 2.2(a) to be promptly forwarded to the Destination Institution. Each Destination Institution has agreed that it will promptly fulfill any such request, subject to its customer identification policies and other account opening terms and conditions.

(c) If a Deposit Account has been recorded on the records of a Destination Institution in your name pursuant to this Section 2, you will be able to enforce your rights in the Deposit Account directly against the Destination Institution, but we will no longer have any custodial responsibility for it and you will not be able to enforce any rights against the Destination Institution through us.

(d) If we were to become insolvent, our receiver or other successor in interest could transfer custody of the Deposit Accounts, and our rights and obligations under this Agreement, to a new custodian. Alternatively, you could exercise your right to have the Deposit Accounts recorded on the records of the Destination Institutions in your name pursuant to this Section 2.

## 3. Custodial Account and Interest Rate

### 3.1. Custodial Account

(a) As your custodian, we will open on our records, either directly or with the assistance of BNY Mellon, a custodial account in which we will hold your interests in the Deposit Accounts (“*Custodial Account*”). We may permit you to have multiple Custodial Accounts.

(b) On the signature page of this Agreement, you will enter a unique alphanumeric identifier for you (“*Depositor Identifier*”), which will be associated with the Custodial Account. You will enter as your Depositor

Identifier your federal taxpayer identification number (“*TIN*”), unless you do not have a TIN, in which case you will enter an alternate identifier that we approve.

(c) If you use an alternate identifier, you must use the same alternate identifier for all placements of deposits for you, by us or by any other financial institution, through the DDA-MMDA Option or through the CD Option of IntraFi Network Deposits. If you later obtain a TIN, you must promptly report it to us and to any such other institutions, and we may use it as your Depositor Identifier.

### 3.2. Interest Rate

(a) The interest rate for the Deposit Accounts at Destination Institutions on any day will be the then-current rate that we specify, which may be any rate (including zero) and which we may modify at any time (“*Interest Rate*”). Through your continued participation in the DDA-MMDA Option, you accept each applicable Interest Rate.

(b) If we permit you to have more than one Custodial Account, we may specify a different Interest Rate for each Custodial Account.

(c) Payment of the full amount of all accrued interest on a Deposit Account at a Destination Institution will be solely the responsibility of the Destination Institution. Neither we nor any other person or entity will be indebted to you for such payment.

## 4. Placement Procedures

### 4.1. Account Type, DDA-MMDA Option Settlement, and Statements

(a) Settlement of payments to and from participating institutions in the DDA-MMDA Option through BNY Mellon that includes the type of deposits we place for you (“*DDA-MMDA Option Settlement*”) will occur each day that is not a Saturday, a Sunday, or another day on which banks in New York, New York, are authorized or required by law or regulation to close (“*Business Day*”).

(b) You may confirm through the DCP (i) the aggregate principal balance in the Deposit Accounts (“*Program Balance*”) and (ii) the principal balance and accrued interest at each Destination Institution as of the preceding Business Day or, after DDA-MMDA Option Settlement-related processing, as of that Business Day.

(c) We will provide you with periodic account statements that include, as of the end of the statement period, your Program Balance, your principal balance at

each Destination Institution, the total interest you have earned on the Deposit Accounts during the period, and the rate of return you have earned on the daily average closing principal balance for the period (“*Statement Period Yield*”).

(d) The account information available on the DCP as described in Section 4.1(b), and the periodic statements described in Section 4.1(c), will be the only evidence that you receive of your ownership of the funds. You should retain the account statements.

#### 4.2. Triggering Events

(a) Schedule 1 sets forth events for triggering a transfer of funds from a root account with us that contains your funds (“*Root Account*”) to the Deposit Accounts at DDA-MMDA Option Settlement (“*Program Deposit*”) or a transfer of funds from the Deposit Accounts to the Root Account at DDA-MMDA Option Settlement (“*Program Withdrawal*”).

(b) An event for triggering a Program Deposit or a Program Withdrawal (“*Triggering Event*”) will be any such event described in Schedule 1.

(c) If you signed a previous version of this Agreement identified as an ICS DPA and became a party to this amended version of the Agreement after you were given notice of amendment, the content of Schedule 1 to this Agreement is the same as the content of Schedule 1 to the version you signed, subject to the following changes:

(i) “ICS” is changed to “the DDA-MMDA Option of IntraFi Network Deposits.”

(ii) “Transaction Account,” if it appears, is changed to “Root Account.”

#### 4.3. Program Deposits

(a) Subject to the terms and conditions of this Agreement, and except as provided in Section 4.3(b), a Triggering Event for a Program Deposit will result in a transfer of funds to the Deposit Accounts at DDA-MMDA Option Settlement the *next* Business Day (“*Regular Program Deposit*”).

(b) Schedule 1 states whether a transfer of funds to the Deposit Accounts at DDA-MMDA Option Settlement on the *same* Business Day (“*Same-Day Program Deposit*”) is available and, if so, the cutoff time for you to request a Same-Day Program Deposit (“*Same-Day Deposit Cutoff Time*”). If so stated, a request that we receive and accept before the Same-

Day Deposit Cutoff Time will be a Triggering Event for a Same-Day Program Deposit.

(c) We may impose a maximum Program Balance amount for deposits that we place for you through the DDA-MMDA Option and will inform you of any such amount we impose. Even if a Triggering Event for a Program Deposit occurs, we may choose not to transfer the amount to the Deposit Accounts if it would cause the Program Balance to exceed the maximum. In addition, we may choose not to transfer to the Deposit Accounts an amount that we have credited to the Root Account, but have not yet collected from a third party.

#### 4.4. Program Withdrawals

(a) Subject to the terms and conditions of this Agreement, and except as provided in Section 4.4(b), a Triggering Event for a Program Withdrawal will result in a transfer of funds from the Deposit Accounts at DDA-MMDA Option Settlement the *next* Business Day (“*Regular Program Withdrawal*”).

(b) Schedule 1 states whether the transfer of funds from your Deposit Accounts at DDA-MMDA Option Settlement on the *same* Business Day (“*Same-Day Program Withdrawal*”) is available and, if so, the cutoff time for you to request a Same-Day Program Withdrawal (“*Same-Day Withdrawal Cutoff Time*”). If Section 1 so states, a request that we receive and accept before the Same-Day Withdrawal Cutoff Time will be a Triggering Event for a Same-Day Program Withdrawal.

#### 4.5. Withdrawal Advances; Security Interest

(a) If Schedule 1 states that we will advance funds to you in anticipation of a Program Withdrawal, or if we otherwise decide in our discretion to advance funds to you in anticipation of a Program Withdrawal, you will owe the amount of these funds to us and we will retain from the funds we receive at DDA-MMDA Option Settlement the amount we have advanced to you.

(b) With respect to any amount that you owe to us pursuant to Section 4.5(a):

(i) you grant us, and acknowledge that we have, a security interest in, and a lien on, the Deposit Accounts, related security entitlements, and other related interests and assets that we may hold for you as custodian and securities intermediary pursuant to the Custodial Agreement for the amount that you owe to us,

(ii) if a Destination Institution fails before a Program Withdrawal is completed, we may retain the amount of the Program Withdrawal from the proceeds of your FDIC insurance claim to satisfy the amount that you owe to us, and

(iii) to the extent that the amount that you owe to us is not satisfied from the interests and assets we are holding for you pursuant to the Custodial Agreement, or from the proceeds of any FDIC insurance claim, the amount remains owed by you to us and is payable on demand.

(c) If, in a separate agreement, you have granted us a security interest in the Deposit Accounts or in any security entitlements or other interests or assets relating to the Deposit Accounts as collateral for a loan to you or otherwise, we may decline to honor a request for a Program Withdrawal, or decline to honor a debit transaction in the Root Account that would trigger a Program Withdrawal or be funded by a Program Withdrawal, to the extent the Program Withdrawal would cause your Program Balance to fall below the loan amount or other amount that you have agreed to maintain in the Deposit Accounts or to which the security interest applies. If, in a separate agreement, you have granted us a security interest in the Root Account, we also may decline to honor transactions in the Root Account in accordance with the separate agreement.

#### 4.6. Account Type and Withdrawal Limit, If Any

(a) Deposits that we place for you through the DDA-MMDA Option at a Destination Institution will be placed in a Deposit Account that is a demand deposit account (“DDA”) or a Deposit Account that is a money market deposit account (“MMDA”), as provided in Section 1 of Schedule 2.

(b) Section 1 of Schedule 2 provides (i) that we will place deposits for you in DDAs, (ii) that we will place deposits for you in MMDAs, or (iii) that we may place deposits for you in DDAs or MMDAs.

(c) If you signed a previous version of this Agreement identified as an ICS DPA and became a party to this amended version of the Agreement as a result of having been given notice of amendment, the following applies:

(i) If the version you signed provided that we would place deposits for you in DDAs, Section 1 of Schedule 2 is deemed to state: “We will place deposits for you in DDAs.”

(ii) If the version you signed provided that we would place deposits for you in MMDAs, Section 1 of Schedule 2 is deemed to state: “We will place deposits for you in MMDAs.”

(iii) If the version you signed provided that we might place deposits for you in DDAs or MMDAs, Section 1 of Schedule 2 is deemed to state: “We may place deposits for you in DDAs or MMDAs.”

(d) Section 1 of Schedule 2 also provides, if MMDAs will or may be used, (i) that an MMDA Program Withdrawal limit of six per month applies or (ii) that no MMDA Program Withdrawal limit applies.

(e) If you signed a previous version of this Agreement identified as an ICS DPA and became a party to this amended version of the Agreement as a result of having been given notice of amendment, and if the version you provided that MMDAs would or might be used, the following applies:

(i) If the version you signed provided that an MMDA Program Withdrawal limit would apply and we have not informed you that we will not enforce such a limit, Section 1 of Schedule 2 is deemed to state, in addition to the statement given in Section 4.6(c), “You may use up to six MMDA Program Withdrawals per month.”

(ii) If the version you signed provided that an MMDA Program Withdrawal limit would not apply or we have informed you that we will not enforce such a limit, Section 1 of Schedule 2 is deemed to state, in addition to the statement given in Section 4.6(c), “No MMDA Program Withdrawal limit applies.”

(f) If a Program Withdrawal limit applies and you exceed the six permitted Program Withdrawals from MMDAs in a month:

(i) We may (A) transfer all the remaining funds in the MMDAs to the Root Account associated with the Custodial Account for the MMDAs or (B), if you also have a Custodial Account for DDA deposits, transfer all the remaining funds in the MMDAs to the Custodial Account for DDA deposits.

(ii) In subsequent months we may effect either such transfer at the time of your sixth Program Withdrawal.

(g) If you exceed the six permitted Program Withdrawals from MMDAs in multiple months, we may also make the Custodial Account for the MMDAs ineligible for Program Deposits.

## 5. Placement Feature

### 5.1. Reciprocal and One-Way

(a) If we are an FDIC-insured depository institution, we are eligible to use a feature of the DDA-MMDA Option in which, when we place deposits, we receive matching deposits placed by other participating institutions in the DDA-MMDA Option and may pay a fee to IntraFi ("*Reciprocal Feature*").

(b) Whether or not we are eligible to use the Reciprocal Feature, we are eligible to use a feature of the DDA-MMDA Option in which, when we place deposits, we do not receive matching deposits, but we and IntraFi may receive fees from Destination Institutions ("*One-Way Feature*").

(c) Section 2 of Schedule 2 provides (i) that we may use either the Reciprocal Feature or the One-Way Feature, (ii) that we will use only the Reciprocal Feature, or (iii) that we will use only the One-Way Feature.

(d) If you signed a previous version of this Agreement identified as an ICS DPA and became a party to this amended version of the Agreement as a result of having been given notice of amendment, the following applies:

(i) Section 2 of Schedule 2 is deemed to provide that we may use either the Reciprocal Feature or the One-Way Feature if (A) Schedule 4 to the version that you signed contained two check boxes, one stating that we might use either ICS Reciprocal or ICS One-Way and the other stating that we would use only ICS Reciprocal, and (B) the box stating that we might use either ICS Reciprocal or ICS One-Way was checked.

(ii) Section 2 of Schedule 2 is deemed to provide that we will use only the Reciprocal Feature if (A) Schedule 4 to the version that you signed contained two check boxes, one stating that we might use either ICS Reciprocal or ICS One-Way and the other stating that we would use only ICS Reciprocal, and (B) the box stating that we would use only ICS Reciprocal was checked.

(iii) Section 2 of Schedule 2 is deemed to provide that we will use only the One-Way Feature if Schedule 4 to the version that you signed contained no check boxes regarding the use of ICS Reciprocal or ICS One-Way.

### 5.2. Placement Feature and Rate

(a) Interest on the Deposit Accounts will be earned at the specified Interest Rate regardless of whether the Reciprocal Feature or the One-Way Feature is used.

(b) When the Reciprocal Feature is used, the fee paid to IntraFi may affect rate determination. When the One-Way Feature is used, fees paid by Destination Institutions, or cost-of-funds rates for Destination Institutions, may affect rate determination.

(c) If we are eligible to use the Reciprocal Feature, and you authorize us to use either the Reciprocal Feature or the One-Way Feature, we may use a feature with greater benefits to you, to us, or both.

### 5.3. Placement Requirements

(a) Under the laws of some states, governmental units may submit deposits for placement through a deposit placement network only if the placing institution is located in the state and receives matching deposits of an equal maturity, if any, and an equal amount.

(b) If you are a state governmental unit, or if you are otherwise subject to restrictions on the placement of deposits for you, you are responsible for determining whether deposit placement in accordance with this Agreement satisfies any applicable restrictions.

## 6. Daily Allocation and Depositor Control

### 6.1. Daily Allocation; Review and Consent

(a) The DDA-MMDA Option process for allocating Program Deposits, Program Withdrawals, and funds already on deposit reflects various considerations, including the need for certain Destination Institutions to receive deposits in amounts that they have placed for their own customers and possible limits on the amounts that an institution is authorized to place or a Destination Institution has agreed to receive. Applicable deposit amounts may change from day to day. Accordingly, the allocation of funds takes place each Business Day.

(b) The set of Destination Institutions to which your funds on deposit are allocated on a Business Day, and the amount allocated to each Destination Institution, may differ from a previous Business Day's allocation. A different allocation may involve the movement of funds from one Destination Institution to another Destination Institution, even though you do not have a Program Deposit or a Program Withdrawal. Such movements of funds will not affect the Interest Rate.

(c) You exercise control over the allocation of your funds through direct contact with us and through the DCP. You are responsible for reviewing the important information we provide you through the DCP, including information regarding proposed allocations that we provide each Business Day. In addition, on request at any time, we will provide you with a list of all Destination Institutions.

(d) Although we will not allocate your funds to Destination Institutions that you exclude or reject as set forth below, you authorize and consent to the allocation of your funds at Destination Institutions that you approve, or do not exclude or reject, as set forth below.

## 6.2. Destination Institution Exclusions

(a) You may enter the name of any depository institution on a list of exclusions from eligibility to receive deposits we place for you through the DDA-MMDA Option (“*Exclusions List*”).

(b) We may ask you to provide your initial Exclusions List by entering exclusions in Section 3(c) of Schedule 2 or by giving us notice of your Exclusions List in another manner we specify.

(c) If you signed a previous version of this Agreement identified as an ICS DPA and became a party to this amended version of the Agreement as a result of having been given notice of amendment, your Exclusions List will include any depository institutions you included in your List of Exclusions in the ICS DPA unless you have subsequently removed them.

(d) An Exclusions List will be effective within one Business Day after the first Business Day on which we have received the Exclusions List from you.

(e) You may add to or subtract from your Exclusions List by giving us notice in a manner we specify. If you add an exclusion in this manner, the new exclusion will be effective within one Business Day after the first Business Day on which we have received the notice from you.

## 6.3. Depositor Control Panel

(a) IntraFi will assist us in providing the DCP. The address of the Depositor Control Panel is <https://www.depositorcontrol.com>.

(b) You represent that you have a computer with Internet access, an e-mail address, the ability to download and print information from the DCP, and the knowledge and experience to use an online tool for DCP functionality. In addition, you acknowledge that you

must obtain and maintain all equipment and services necessary for access to the DCP.

(c) To access the DCP, you will be required to enter your login credentials. Your initial user name will be the account number for the Root Account or such other user name as we specify. Your initial password will be the last four characters of the Depositor Identifier entered for the sole or primary Depositor on the signature page of this Agreement.

(d) You will also be required to enter the email address you have provided to us. We will separately advise you of any additional steps required of you by security controls.

## 6.4. Depositor Placement Review

(a) Each Business Day, your aggregate principal balance that will be in Deposit Accounts after that day’s DDA-MMDA Option Settlement will be provisionally allocated to Destination Institutions. The amount allocated will reflect your Program Balance as of the last DDA-MMDA Option Settlement, plus any Program Deposit that will occur at the day’s DDA-MMDA Option Settlement, minus any Program Withdrawal that will occur at the day’s DDA-MMDA Option Settlement. The allocation may provide that previously-deposited funds will be removed from a Destination Institution and deposited in another Destination Institution.

(b) After the provisional allocation occurs on a Business Day, but before allocation becomes final at DDA-MMDA Option Settlement, Depositor Placement Review (“*DPR*”) will occur through the DCP. Even if a Destination Institution is not on your Exclusions List, the final allocation that day will not allocate your funds to the Destination Institution if you reject it during DPR through the DCP. Your rejection of a Destination Institution will be effective only if you submit it before DPR ends.

(c) The DPR period each Business Day will be as follows: 3:00 PM to 3:15 PM Eastern time. Daylight Saving Time applies when nationally in effect. We may change the DPR period by posting notice on the DCP in advance of the change.

(d) In DPR, you will see a list of Destination Institutions to which your funds are proposed to be allocated at DDA-MMDA Option Settlement later that day (“*Proposed Placement List*”), reflecting the provisional allocation of all your funds, including funds that will be moved from one Destination Institution to another Destination Institution. The Proposed Placement List will include the principal balance allocated to each Destination Institution. If you review

the Proposed Placement List, and you click the approval button or you do not reject any of the Destination Institutions on the list, you will be approving the allocation and your funds will be allocated in accordance with the list.

(e) If you reject any of the Destination Institutions on the Proposed Placement List, you will be approving allocation to Destination Institutions on the list that you do not reject. After entering rejections, if sufficient time remains in DPR, you will have the opportunity to review a list of other Destination Institutions to which your funds could be allocated (“*Alternate Placement List*”). If you click the approval button for the Alternate Placement List, or you do not reject any of the Destination Institutions on it, you will be approving the allocation of your funds to any of the listed Destination Institutions. If you reject any of the Destination Institutions on the Alternate Placement List, you will be approving allocation to listed Destination Institutions that you do not reject. Your funds may be allocated to any combination of Destination Institutions on the Proposed Placement List and the Alternate Placement List that you do not reject.

(f) If the provisional allocation on a Business Day would result in funds of yours currently at a Destination Institution being moved to another Destination Institution and you reject the other Destination Institution in DPR that Business Day, the funds will not necessarily remain at the first Destination Institution. The funds will be allocated to a Destination Institution that you do not reject or returned to the Root Account.

(g) A Destination Institution that you reject in DPR will also be added to your Exclusions List, for purposes of future allocations, within one Business Day after the Business Day on which you submit the rejection.

(h) We do not guarantee that all your funds will be allocated to Destination Institutions on any particular day, even if they were allocated to Destination Institutions on a previous day. Exclusions and rejections of Destination Institutions may increase the chance that funds will not be allocated. If funds not yet transferred to the Deposit Accounts are not allocated to a Destination Institution on a Business Day, the funds will remain in the Root Account. If funds previously transferred to the Deposit Accounts are not allocated to a Destination Institution on a Business Day, the funds will be returned to the Root Account.

## 7. FDIC Insurance Considerations

### 7.1. Deposit Insurance Coverage

(a) You may obtain information about FDIC deposit insurance coverage by visiting the FDIC website at [www.fdic.gov](http://www.fdic.gov) or by contacting the FDIC by letter, email, or telephone.

(b) All of your deposits at a Destination Institution in the same insurable capacity (whether you are acting directly or through an intermediary) will be aggregated for the SMDIA. You should add to your Exclusions List any depository institution at which you have other deposits in the same insurable capacity. Insurable capacities include, among others, individual accounts and joint accounts.

(c) You are responsible for determining whether deposits we place for you are maintained in separate insurable capacities. Separate divisions within a corporate entity are not eligible for separate insurance coverage, and a separate TIN or other Depositor Identifier does not establish a separate insurable capacity.

(d) We will use the Depositor Identifier to identify you, and we will place deposits for you on the understanding that you are not submitting deposits for placement under more than one Depositor Identifier in the same insurable capacity.

(e) The requirements for FDIC deposit insurance coverage of the deposits of governmental units, including the United States government, state and local governments, the District of Columbia, and the Commonwealth of Puerto Rico, are set forth in FDIC regulations. If you are a governmental unit, you are responsible for determining whether the requirements for deposit insurance have been met. We are not responsible for losses resulting from the placement of deposits that are not eligible for FDIC deposit insurance.

(f) Records that we maintain, or that BNY Mellon maintains for us, reflecting ownership of the Deposit Accounts will be used to establish your eligibility for deposit insurance coverage. Accordingly, you must immediately report to us any changes in ownership information so that there will be accurate information to provide to the FDIC if a Destination Institution fails and the FDIC pays its insured deposits by cash payment. The FDIC could also require you to provide additional documentation.

## 7.2. Responsibility to Monitor Deposits; Available Information

(a) You are responsible for monitoring the total amount of your funds at each Destination Institution in each insurable capacity to determine the extent of FDIC deposit insurance coverage available to you for deposits at that Destination Institution. You should confirm that each placement of your funds at Destination Institutions is consistent with your exclusions and rejections.

(b) You can obtain publicly available financial information on Destination Institutions from the National Information Center of the Federal Reserve System at [www.ffiec.gov/nicpubweb/nicweb/nichome.aspx](http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx).

## 7.3. Uninsured Deposits

(a) Although we will not place a deposit for you through the DDA-MMDA Option at any one Destination Institution in an amount that exceeds the SMDIA, a deposit that we place for you will not be eligible for FDIC insurance coverage at a Destination Institution before it becomes a deposit at the Destination Institution or after it is withdrawn from the Destination Institution.

(i) If we are an FDIC-insured depository institution and the Root Account is eligible for FDIC insurance coverage, a deposit in the Root Account will be aggregated with your other deposits with us in the same insurable capacity for application of the SMDIA of \$250,000.

(ii) If we are a credit union the share accounts of which are insured by the National Credit Union Administration (“NCUA”) and the Root Account is a share account with us that is eligible for NCUA insurance coverage, a deposit in the Root Account will be aggregated with your other deposits with us in the same insurable capacity for application of the NCUA standard maximum share insurance amount of \$250,000.

(iii) If we are not an FDIC-insured depository institution or the Root Account is not eligible for FDIC insurance coverage, a deposit in the Root Account will not be FDIC-insured. If we are not an NCUA-insured credit union or the Root Account is not eligible for NCUA insurance coverage, a deposit in the Root Account will not be NCUA-insured.

(b) If you cannot accept the risk of having a deposit with us that is not fully insured, you will be responsible for making arrangements with us, if we offer them, to have the deposits collateralized, protected by a properly-executed repurchase sweep arrangement, or

otherwise adequately protected, in a manner consistent with applicable law. You should consult your legal advisor to determine whether a collateralization arrangement is consistent with applicable law.

(c) If you cannot accept the risk of having a deposit with us that is not fully insured, and we do not offer arrangements of the kind described in Section 7.3(b) or we offer them but you do not make such arrangements with us, you should not submit deposits for placement through the DDA-MMDA Option.

## 7.4. Deposit Insurance Payments

(a) In case of the liquidation of, or other closing or winding up of the affairs of, an insured depository institution, the FDIC is generally required by law to pay each insured deposit “as soon as possible,” either by cash payment or by transferring the deposit to another insured depository institution. It is possible, however, that an insurance payment could be delayed. Neither we nor any other person or entity will be obligated to advance funds to you with respect to an insurance payment or to make any payment to you in satisfaction of a loss you might incur as a result of a delay in an insurance payment.

(b) If a Destination Institution at which we place deposits for you is closed and the FDIC does not transfer deposits that include your funds to another insured depository institution, but will make a deposit insurance cash payment, we will cause a deposit insurance claim for your funds to be filed with the FDIC, and we will credit to you the proceeds of the deposit insurance claim that we receive for your funds, subject to any valid security interest.

(c) If the FDIC makes a deposit insurance cash payment for a Deposit Account at a closed Destination Institution, the FDIC is required by law to pay the principal amount plus unpaid accrued interest to the date of the closing of the Destination Institution, as prescribed by law, subject to the SMDIA. No interest is earned on a Deposit Account at a Destination Institution after it closes.

(d) If the FDIC transfers the deposits of a closed Destination Institution to another insured depository institution, the acquiring institution may assume a Deposit Account. The acquiring institution may change the rate at which it pays interest on the assumed Deposit Account, subject to your right to withdraw the funds.

## 8. Additional Considerations

### 8.1. Compare Rates

(a) We are not acting as your investment advisor, and we are not advising you about alternative investments. You are responsible for comparing the rates of return and other features of the Deposit Accounts to other available deposit accounts and other kinds of investments before choosing placement through the DDA-MMDA Option.

(b) The Interest Rate may be higher or lower than a cost-of-funds rate for a Destination Institution, an interest rate for another customer, or interest rates on comparable deposits available directly from us, from the Destination Institutions at which the Deposit Accounts are held, from other Destination Institutions, or from insured depository institutions that are not Destination Institutions.

### 8.2. Allocation Considerations

(a) The DDA-MMDA Option allocation process is subject to applicable law and may be affected by our objectives, IntraFi's objectives, or both, including administrative convenience, reduction of costs, and enhancement of profits.

(b) Participating institutions in the DDA-MMDA Option service may make compensatory payments resulting in payments to other participating institutions, or receive compensatory payments resulting from payments by other participating institutions, including compensatory payments that reflect the difference between an interest rate for deposits placed by an institution and a rate at which the receiving institution would otherwise pay interest.

### 8.3. Mutual Institution Rights

(a) Your funds may be placed in a Deposit Account at a Destination Institution that is in the mutual form of organization. Such a Deposit Account will be recorded on the records of the mutual institution in the name of the sub-custodian and not in your name. The sub-custodian will not attend or vote at any meeting of the depositor members of a mutual institution, or exercise any subscription rights in a mutual institution's mutual-to-stock conversion, either on its own behalf or on your behalf.

(b) If we receive from the sub-custodian notice of a meeting of depositor members of a mutual institution or other materials or information relating to a mutual institution's mutual-to-stock conversion, we may forward

such notice, materials, or information to you. If you wish to receive such notice, materials, or information directly from the mutual institution, or if you wish to attend or vote at any meeting of the depositor members of the mutual institution or receive subscription rights, you must, before the applicable record date (a date that is usually at least one year before the mutual institution's board of directors adopts a plan of conversion), dismiss us as your custodian and have the Deposit Account recorded on the records of the mutual institution in your name pursuant to Section 2.2.

## 9. Other Provisions

### 9.1. Release and Use of Identifying Information

(a) We may provide information that identifies you ("*Identifying Information*"), including your name, your TIN or other Depositor Identifier, and information on your deposits, to a party that provides services in connection with the DDA-MMDA Option ("*Service Provider*"), including IntraFi and BNY Mellon. A Service Provider may use Identifying Information in providing services in connection with the DDA-MMDA Option.

(b) We or a Service Provider may also provide Identifying Information to a Destination Institution, but will do so only to the extent necessary to comply with a request by you or your agent or to comply with applicable law. In addition, we or a Service Provider may provide Identifying Information to the FDIC in connection with a deposit insurance claim.

(c) Except as provided in Section 9.1(a) or Section 9.1(b), we will not provide Identifying Information to any party unless we determine that (i) we are required by applicable law to do so or (ii) we are permitted by applicable law to do so and have reasonable grounds to do so to protect our own legal or business interests or the legal or business interests of IntraFi or BNY Mellon.

(d) IntraFi may use and disclose any and all analyses, comparisons, indexes, or other data or information assembled, compiled, or otherwise developed by IntraFi, including information regarding aggregated activity of the DDA-MMDA Option depositors, as long as it does not individually identify you.

### 9.2. Tax Reporting and Withholding

(a) To the extent required by applicable law, we will file with the U.S. Internal Revenue Service ("IRS"), and furnish to you, IRS Form 1099-INT or its equivalent,

or IRS Form 1042-S or its equivalent, for interest paid on the Deposit Accounts by the Destination Institutions.

(b) If we are notified by the IRS that backup withholding is required for interest on the Deposit Accounts, or if we otherwise determine that we are required by applicable law to collect such backup withholding, we will collect it and pay it to the IRS.

### 9.3. Liability and Dispute Resolution

(a) We will maintain, directly or through a Service Provider, appropriate records of our placements for you. We will not place deposits for you through the DDA-MMDA Option at a Destination Institution that is the subject of a then-effective exclusion on your Exclusions List, at a Destination Institution that is the subject of a then-effective rejection by you, or at a Destination Institution under one Depositor Identifier in an amount that exceeds the SMDIA.

(b) If all or part of your deposit at a Destination Institution is uninsured because of our failure to comply with the requirements set forth in Section 9.3(a), and if the Destination Institution fails and you do not otherwise recover the uninsured portion, we will reimburse you for your documented loss of the uninsured portion that you do not otherwise recover.

(c) SUBJECT TO OUR REIMBURSEMENT OBLIGATION IN SECTION 9.3(b), AND EXCEPT AS MAY BE OTHERWISE REQUIRED BY APPLICABLE LAW, WE WILL NOT BE LIABLE, AND IN NO EVENT WILL INTRAFI OR BNY MELLON BE LIABLE, TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOSS OR DAMAGE INCURRED OR ALLEGEDLY INCURRED IN CONNECTION WITH THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, WE, INTRAFI, AND BNY MELLON WILL NOT HAVE ANY LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR: (i) ANY LOSS ARISING OUT OF OR RELATING TO A CAUSE OVER WHICH WE DO NOT HAVE DIRECT CONTROL, INCLUDING THE FAILURE OF ELECTRONIC OR MECHANICAL EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER INTERCONNECT PROBLEMS, UNAUTHORIZED ACCESS, THEFT, OPERATOR ERRORS, GOVERNMENT RESTRICTIONS, OR FORCE MAJEURE (E.G., EARTHQUAKE, FLOOD, SEVERE OR EXTRAORDINARY WEATHER CONDITIONS, NATURAL DISASTERS OR OTHER ACT OF GOD, FIRE, ACTS OF WAR, TERRORIST ATTACKS, INSURRECTION, RIOT, STRIKES, LABOR DISPUTES OR SIMILAR PROBLEMS, ACCIDENT, ACTION OF GOVERNMENT, COMMUNICATIONS, SYSTEM OR POWER FAILURES, OR EQUIPMENT OR SOFTWARE MALFUNCTION), (ii) DELAY IN ANY FDIC INSURANCE PAYMENT, (iii) THE FINANCIAL CONDITION OF ANY DESTINATION INSTITUTION OR THE ACCURACY OF ANY FINANCIAL INFORMATION ABOUT ANY DESTINATION INSTITUTION, OR (iv) ANY SPECIAL, INDIRECT,

PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS).

(d) ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL BE GOVERNED BY THE DISPUTE RESOLUTION, ARBITRATION, CHOICE OF LAW, VENUE, WAIVER OF JURY TRIAL, AND COSTS RELATED TO DISPUTES PROVISIONS, IF ANY, CONTAINED IN THE CUSTODIAL AGREEMENT.

### 9.4. Miscellaneous

(a) This Agreement constitutes the entire agreement between you and us relating to the placement of deposits through the DDA-MMDA Option and any other matter herein, supersedes prior agreements, understandings, negotiations, representations, and proposals, whether written or oral, relating to any matter herein, and may not be amended by any oral representation or oral agreement. This Section 9.4(a) will not affect the validity of any addenda into which we have entered with you.

(b) Schedule 1 and Schedule 2 are incorporated into and made part of this Agreement. We may amend this Agreement, including any Schedule, prospectively by giving you written notice of the amendment at least fourteen (14) days before the effective date of the amendment, which will be specified in the amendment or, if no effective date is specified in the amendment, the date that is fourteen (14) days after we give you written notice of the amendment. We may provide written notice of the amendment by means of a posting on the DCP, an entry on your account statement, an email message, or a printed letter.

(c) Either party may terminate this Agreement on written notice to the other, but the obligations of both parties will survive with respect to any funds deposited at the time of termination. In addition, the provisions of this Section 9.4 will survive termination.

(d) Except as provided in Section 2.2(d), this Agreement may not be assigned, in whole or in part, by either party except by operation of law or as required by applicable law, and any purported assignment in violation hereof is void.

(e) The headings in this Agreement are not intended to describe, interpret, define, or limit the scope, meaning, or intent of this Agreement or any clause in it. Except as otherwise specified, a reference to a Section is a reference to a section of this Agreement. A reference to a Schedule is a reference to a schedule to this Agreement. The term "applicable law" refers to all applicable statutes, rules, regulations, and judicial



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orders, whether federal, state, or local. The words "include," "includes," and "including" do not imply exclusion.

(f) This Agreement and, unless otherwise provided in the Custodial Agreement, the Custodial Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. This Agreement and, unless otherwise provided in the Custodial Agreement, the Custodial Agreement will be valid, binding, and enforceable

against you and us when executed by one of the following means that we accept: (i) an original manual signature, (ii) a DocuSign® eSignature or another electronic signature that we accept, or (iii) a faxed, scanned (including in a Portable Document Format or PDF document), or photocopied signature that we accept. Each DocuSign® eSignature, other electronic signature, or faxed, scanned, or photocopied signature that we accept shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original signature, and you and we waive any objection to the contrary.

The remainder of this page is intentionally left blank.



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By signing below, you ("*Depositor*") and we ("*Relationship Institution*") agree to be legally bound by this IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement, effective when you and we have signed it. If the Custodial Account will be a joint account, each owner of the Custodial Account must sign this Agreement.

RELATIONSHIP INSTITUTION

Institution: Pacific Premier Bank

Signature: \_\_\_\_\_

Name and title of authorized signatory:

\_\_\_\_\_  
\_\_\_\_\_

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

SOLE OR PRIMARY DEPOSITOR

Depositor: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and title of authorized signatory (if not individual):

\_\_\_\_\_  
\_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):

\_\_\_\_\_

Email: \_\_\_\_\_

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

ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)

Depositor: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):

\_\_\_\_\_

Email: \_\_\_\_\_

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

ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)

Depositor: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):

\_\_\_\_\_

Email: \_\_\_\_\_

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

(Add signature lines as needed.)



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## Schedule 1 to IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement

### Program Deposits and Program Withdrawals

This **Schedule 1** is part of the IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement (“*Agreement*”). Terms not defined in this Schedule 1 have the meanings, if any, assigned elsewhere in the Agreement.

#### 1. Specified Terms

The Same-Day Deposit Cutoff Time is as follows:

<input type="text" value="11:00"/>	<input checked="" type="checkbox"/> AM	<input type="checkbox"/> PM	<input type="checkbox"/> Eastern	<input type="checkbox"/> Central	<input type="checkbox"/> Mountain	<input checked="" type="checkbox"/> Pacific
(insert time)	(check AM or PM)		(check time zone)			

Daylight Saving Time applies when nationally in effect unless checked here

#### 2. Program Deposits

(a) The Triggering Event for a Regular Program Deposit is a Regular Program Deposit request by you that we receive and accept. Subject to the terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount to the Deposit Accounts at DDA-MMDA Option Settlement on the next Business Day.

(b) The Triggering Event for a Same-Day Program Deposit is a Same-Day Program Deposit request by you that we receive and accept before the Same-Day Deposit Cutoff Time on a Business Day. Subject to the terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount to the Deposit Accounts at DDA-MMDA Option Settlement later on the same Business Day.

(c) If a Triggering Event for a Program Deposit occurs, we may debit the Root Account and credit a holding account before the transfer of funds to the Deposit Accounts occurs at DDA-MMDA Option Settlement.

#### 3. Program Withdrawals

(a) The Triggering Event for a Regular Program Withdrawal is a Regular Program Withdrawal request by you that we receive and accept. Subject to the terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount from the Deposit Accounts at DDA-MMDA Option Settlement on the next Business Day.

(b) The Triggering Event for a Same-Day Program Withdrawal is a Same-Day Program Withdrawal request by you that we receive and accept before the Same-Day Withdrawal Cutoff Time on a Business Day. Subject to the other terms and conditions of this Agreement, if such a Triggering Event occurs, we will transfer the requested amount from your Deposit Accounts at ICS Settlement later the same Business Day.

(c) Subject to the terms and conditions of this Agreement, and subject to the rules and cutoff times that otherwise apply to root accounts with us, we may in our discretion advance funds to you in anticipation of a Program Withdrawal to honor your debit transactions in the Root Account so long as the sum of your Root Account balance and your balance in the Deposit Accounts of the applicable type, after taking into account any pending Program Deposits and any pending Program Withdrawals, is not less than zero. We may do so even if the amount of the debit transaction exceeds your Root Account balance. You will owe us any amounts that we credit as advances in anticipation of a Program Deposit and we will retain those amounts from the funds we receive at DDA-MMDA Option Settlement.

(d) If a Triggering Event for a Program Withdrawal occurs, we may credit the Root Account and debit a holding account before the transfer of funds from the Deposit Accounts occurs at DDA-MMDA Option Settlement.



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## Schedule 2 to IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement

### Account Type, Placement Feature, and Exclusions

This **Schedule 2** is part of the IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement (“*Agreement*”). Terms not defined in this Schedule 2 have the meanings, if any, assigned elsewhere in the Agreement.

#### 1. Account Type

We will place deposits for you in DDAs.

We will place deposits for you in MMDAs.

We may place deposits for you in DDAs or in MMDAs.

(Check one above.)

You may use up to six MMDA Program Withdrawals per month.

→

No per-month MMDA Program Withdrawal limit applies.

(If MMDAs will or may be used, check one above.)

#### 2. Placement Feature

We may use the Reciprocal Feature, the One-Way Feature, or both in placing deposits for you.

We will use only the Reciprocal Feature in placing deposits for you.

We will use only the One-Way Feature in placing deposits for you.

(Check one above.)

#### 3. Exclusions

(a) You may place depository institutions on your Exclusions List by identifying them in the list below, unless we specify another means by which you will provide your Exclusions List.

(b) The Exclusions List should include the city and state of the depository institution’s main office (rather than the city and state of a branch location). The Exclusions List may also include the institution’s FDIC certificate number or transit routing number. If you do not list any exclusions enter “none” under Name of Institution on the first line (but your signature after a blank list will constitute your acknowledgment that you have not listed any exclusions).



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(c) Exclusions List:

Name of Depository Institution	City and State	FDIC Certificate or Routing Number

(Add lines if necessary.)

\_\_\_\_\_  
Signature of sole or primary Depositor

# Custodial Agreement

You, the undersigned, enter into this Custodial Agreement ("*Agreement*") with the following financial institution ("*we*" or "*us*"):

Pacific Premier Bank

1. Pursuant to this Agreement, you authorize us to hold and act as your custodian with respect to all deposit accounts, including all time deposits, money market deposit accounts, and demand deposit accounts, issued or established pursuant to the IntraFi Network Deposits CD Deposit Placement Agreement, the IntraFi Network Deposits DDA-MMDA Deposit Placement Agreement, or a predecessor agreement ("*Deposit Accounts*") for funds of yours placed as deposits through the IntraFi<sup>SM</sup> Network Deposits<sup>SM</sup> CD Option ("*CD Option*"), formerly known as CDARS<sup>®</sup>, or the IntraFi Network Deposits DDA-MMDA Option ("*DDA-MMDA Option*"), formerly known as ICS<sup>®</sup>, and all your security entitlements and other related interests and assets with respect to the Deposit Accounts ("*Related Entitlements*"). The custodial account in which we will hold the Deposit Accounts and Related Entitlements ("*Custodial Account*") comprises all the CD Option and DDA-MMDA Option custodial accounts that we maintain for you.

2. As your custodian, we may (i) cause the Deposit Accounts to be titled in our name or in the name of our sub-custodian, (ii) collect for your account all interest and other payments of income or principal pertaining to the Deposit Accounts, (iii) endorse on your behalf any check or other instrument received for your account that requires endorsement, (iv) in accordance with your instructions, deposit your funds in, or withdraw your funds from, the Deposit Accounts, (v) in accordance with your instructions, deliver or transfer funds from another account with us to the Deposit Accounts or deliver or transfer funds from the Deposit Accounts to another account with us, (vi) for Deposit Accounts that are time deposits, surrender for payment for your account maturing CDs and those for which early withdrawal is requested, (vii) execute and deliver or file on your behalf all appropriate receipts and releases and other instruments, including whatever certificates may be required from custodians or may be necessary to obtain exemption from taxes and to name you when required for the purpose of the instrument, and (viii) take such other actions as are customary or necessary to effectuate the purposes of this Agreement.

3. For purposes of Article 8 of the Uniform Commercial Code in applicable state law ("*UCC*"), we will act as your securities intermediary for, and will treat as financial assets, any Deposit Accounts and Related Entitlements that we hold for you pursuant to this Agreement. The Custodial Account will be a securities account, as defined in the UCC.

4. We may comply with any writ of attachment, execution, garnishment, tax levy, restraining order, subpoena, warrant, or other legal process that we believe (correctly or otherwise) to be valid. We may notify you of such process by telephone, electronically, or in writing. If we are not fully reimbursed for records research, imaging, photocopying, and handling costs by the party that served the process, we may charge such costs to your account, in addition to any minimum fee we charge for complying with legal processes.

5. We may honor any legal process that is served personally, by mail, or by electronic mail or facsimile transmission at any of our offices or an office of our agent (including locations other than where the funds, records, or property sought is held), even if the law requires personal delivery at the office where your account or records are maintained.

6. We will have no liability to you for any good-faith act or omission by us in connection with this Agreement. You agree to indemnify us and our sub-custodian, and to hold us and our sub-custodian harmless from, all expenses (including counsel fees), liabilities, and claims arising out of any good-faith act or omission by us in connection with this Agreement or compliance with any legal process relating to the Custodial Account that we believe (correctly or otherwise) to be valid. You agree to pay any service charges that we impose on the Custodial Account.

7. You may be an individual in an individual capacity, more than one individual in a joint capacity, or a trust, partnership, corporation, or other legal entity. We may accept instructions on your behalf from any individual who signs this Agreement as or on behalf of a Depositor and from any of the following individuals:

Name	Title or Legal Capacity

(Add lines if necessary.)

The remainder of this page is intentionally left blank.

By signing below, you ("*Depositor*") and we ("*Relationship Institution*") agree to be legally bound by this Custodial Agreement, effective when you and we have signed it. If the Custodial Account will be a joint account, each owner of the Custodial Account must sign this Agreement.

**RELATIONSHIP INSTITUTION**

Institution: Pacific Premier Bank

Signature: \_\_\_\_\_

Name and title of authorized signatory:

\_\_\_\_\_  
\_\_\_\_\_

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

**SOLE OR PRIMARY DEPOSITOR**

Depositor: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and title of authorized signatory (if not individual):

\_\_\_\_\_  
\_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):

\_\_\_\_\_

Email: \_\_\_\_\_

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

**ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)**

Depositor: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):

\_\_\_\_\_

Email: \_\_\_\_\_

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

**ADDITIONAL DEPOSITOR (FOR JOINT ACCOUNT)**

Depositor: \_\_\_\_\_

Signature: \_\_\_\_\_

Depositor TIN or approved alternate identifier (and type):

\_\_\_\_\_

Email: \_\_\_\_\_

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

(Add signature lines as needed.)

**TAB F**

**San Gorgonio Memorial Hospital and San Gorgonio Memorial Health Care District**

To: Finance Committee, Board of Directors, and District Board

Agenda Item for April 26, 2023, Finance Committee and May 2, 2023, Board Meetings

**Subject:**

Authorization to enter into an agreement with Sysmex America, Inc for acquisition of equipment, service and reagents for the performance of diagnostic urinalysis, including the trade-in of the current equipment.

**Background:**

The hospital is in need of an updated laboratory instrument to perform routine urinalysis and assist in the determination of urine specimens needing culture and sensitivity. Existing equipment is approaching the end of life. This new equipment will reduce the need for manual microscopic screenings by approximately 50 per cent by Clinical Laboratory Scientists (CLS).

With the acquisition of this new equipment, we will reduce the annual cost of associated tests from approximately \$53,442 per year to approximately \$46,427. The term of this agreement is five years. The projected cost for the five years is \$232,135 compared to the current projected five-year expense of \$267,210 which represents a saving of approximately \$35,000.

**Recommended Action:** We request the district approve the cost per reportable agreement with Sys,ex America, Inc and trade-in of the existing equipment for an allowance of \$25,000 trade-in allowance.



**COST-PER-REPORTABLE C AGREEMENT**

GPO Urinalysis: Premier Urinalysis  
 IHN:Adventist Health West

Prepared Date: 4/13/2023  
 Quote Number: Q-00036250  
 Agreement Number: 00009920.0

This Equipment Cost-Per-Reportable C Agreement (the "Agreement") is entered into by and between Sysmex America Inc. ("Sysmex") and the Customer identified in the "Bill To" column below ("Customer"). Sysmex and Customer may be individually referred to herein as "Party" and collectively as the "Parties".

**SECTION I: CUSTOMER INFORMATION (Requires Legal Name and Address)**

Bill To:

Account	Address	City	State	ZIP Code
San Gorgonio Memorial Hospital	600 N Highland Springs Ave	Banning	CA	92220

Ship To:

Location	Address	City	State	ZIP Code
San Gorgonio Memorial Hospital	600 N Highland Springs Ave	Banning	CA	92220

**SECTION II: CUSTOMER COMMITMENT SUMMARY**

The Term of this Agreement shall be: 60 months

**1. Pricing Summary Totals**

Price Component	Monthly Price	Annual Price	Final Agreement Price
<b>Equipment</b>	\$1,420.05	\$17,040.54	\$85,202.70
<b>Service</b>	\$969.75	\$11,637.00	\$58,185.00
<b>Reagents</b>	\$1,479.15	\$17,749.81	\$88,749.05
<b>Total Number of Tests</b>	1,004	12,045	60,225
<b>CPR: Total Amount (Equipment, Service, and Reagents)</b>			<b>\$232,136.75</b>
<b>CPR: Total Cost Per Reportable (Equipment, Service, and Reagents)</b>			<b>\$3.854</b>
<b>Minimum Monthly Billing (Excludes Reagents and Controls)</b>			<b>\$2,389.80</b>

**2. Equipment, Products and Services**

**TRADE IN EQUIPMENT.** If applicable, the "Trade-In" of existing equipment owned and being replaced by Customer with Equipment hereunder, Customer hereby represents, warrants and agrees that sole and exclusive title to such Trade-In equipment is held and owned by Customer, free and clear of any liens or encumbrances of any kind. Customer shall cease use of the Trade-In equipment on the Equipment Acceptance Date and decontamination shall be performed: (i) by Customer in full accord with the equipment manufacturer's procedure(s)

for Trade-In equipment not manufactured by Sysmex; and/or (ii) by Sysmex for Trade-In equipment manufactured by Sysmex. Customer hereby grants to Sysmex or Sysmex's designee a right and license to enter Customer's premises during Customer's normal business hours and at a mutually agreeable time to uninstall and remove the existing equipment from Customer's premises, at which time Customer shall transfer title to such equipment to Sysmex and execute any documentation reasonably requested by Sysmex in connection therewith to effect such transfer of title. Notwithstanding any provision of this Agreement to the contrary, no equipment that was used or otherwise made available, directly or indirectly, for a Prohibited Use, as defined in Section III shall be eligible for a Trade-In hereunder, and Sysmex shall not remove or take title to any such equipment.

a. **List of Equipment and Related Terms.** The following is the list of "Equipment" and the related terms and conditions applicable thereto:

Equipment (Hardware / Software)			
Site Name	Equipment	Material #	Price
San Gorgonio Memorial Hospital	UN2000N 1 UF 1 NOVUS BENCHTOP	UN2000AN-011BENCH	\$103,756.64

San Gorgonio Memorial Hospital	Repl. Promo 2023 UN2000 - valid through 7/31/23	Replacement Promo 2023 UN2000 \$25K	\$(25,000.00)
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**Custom Product Specific Language:**

**b. INTENTIONALLY OMITTED.**

**Seismic Kit Parts:**

Sysmex will provide Equipment with seismic supports and attachments fastened to Equipment (but not to Customer's structure) as described in the California Office of Statewide Health Planning and Development (OSHPD) Preapproval of Manufacturer's Certification OPM-02228-13, 0343-13, 02227-13, 0226-13 and 0225-13, posted on OSHPD page - <https://www.oshpd.ca.gov/FDD/Pre-Approval/preapprovalMfgCert-wTemplate.html>, applicable to the specific models of equipment (XN-9000, XN-9100, XN-3000, XN-2000 and XN-1000 series) dated December 21, 2015 (each, an "OSHPD Certification"), based on the 2013 California Building Code where S(DS) is not greater than 2.20. Customer is solely responsible for determining whether Customer's installation conforms to the General Notes in the applicable OSHPD Certification and for fulfilling the "Responsibilities of the Structural Engineer of Record of the Building" on the applicable OSHPD Certification.

**c. Products.** The "Products" to be provided by Sysmex to Customer hereunder are listed below by Customer site and in reference to the applicable Equipment for which they will be used. Sysmex pricing for reagent and quality control Products is subject to change within Sysmex's sole and absolute discretion at any time, unless in conflict with any national or GPO contract applicable to Customer.

**List of Products**

Products		Total Term (months): 60			Total Annual Price: \$17,749.81	
Site Name	Equipment	Material #	Description	Qty / Year	Unit Price	Annual Price
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	11561695	Chek-Stix Liquid QC Kit (Novus)	3	\$360.00	\$1,080.00
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	BE740265	UF-CONTROL	8	\$167.24	\$1,337.92
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	10697754	Clinitek Novus Rinse Additive	1	\$24.54	\$24.54
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	10697753	Clinitek Novus Calibrator	5	\$47.37	\$236.85
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	10634643	Clinitek Novus 10 Cassette 450	29	\$148.78	\$4,314.62
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	83401621	CELLCLEAN for Urinalysis (50ml)	6	\$76.30	\$457.80
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	AG792864	UF-FLUOROCELL CR	4	\$191.61	\$766.44
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	CE919553	UF-FLUOROCELL SF	4	\$191.61	\$766.44
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	ZA900009	UF-CELLPACK CR UPR-300A	4	\$179.90	\$719.60
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	ZA900008	UF-CELLPACK SF UPF-300A	4	\$179.90	\$719.60
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	ZA900007	UF-CELLSHEATH UCS-900A	55	\$133.20	\$7,326.00

No product (including without limitation any consumables, printer supplies, bar code labels, slides, stain, methanol, piercing needles or cubetainer spout kits) shall be deemed included under this Agreement unless specifically listed in the table above.

**d. BeyondCare Quality Monitor ("BCQM"), if applicable:**

BCQM is a web-based quality control program, including calibration management for Equipment, accessed by Customer via a browser contained within the internal processing unit of the Equipment (the "Browser"), or in the case of XN-L Equipment via the laptop provided to Customer (the "Laptop"). The Browser and the Laptop shall be collectively referred to herein as the ("BCQM Access Mechanism"). Customer may also access BCQM via use of an Alternate Device, as defined below. Provided Customer is in compliance with the terms of this Agreement, the Laptop shall be covered under the terms of the Service Warranty for the duration of the applicable term.

Customer represents and warrants (i) the BCQM Access Mechanism shall be used solely for Customer's operation of the BCQM program and in accordance with the operator's manual therefor; (ii) that Customer will install and keep current software on the BCQM Access Mechanism to detect and destroy malware such as viruses, Trojan horses, worms, spyware and to prevent any uninvited third party access via network or other electronic means (the "Antivirus Requirements"); and (iii) that all applicable patches and upgrades shall be applied to the BCQM Access Mechanism operating system in a timely manner (the "Patching Update Requirements").

Customer further represents and warrants (i) BCQM shall be used solely for quality control management of the Equipment; (ii) BCQM shall only be accessed at a Customer site or any site reasonably acceptable for an authorized user to access BCQM in accordance with this Agreement; and (iii) in the event Customer chooses to access BCQM on any other device that is not a BCQM Access Mechanism (each, an "Alternative Device") such Alternative Device shall meet the Antivirus Requirements and Patching Updates Requirements. In no event shall Sysmex be liable for any damage arising or resulting from the use of an Alternative Device.

Notwithstanding anything to the contrary in this Agreement, Customer agrees to indemnify and hold Sysmex harmless for any and all damages of arising from Customer's failure to comply with its obligations contained in this Section.

**e. Product Usage.** The estimated annual reagent and quality control Product usage set forth in the List of Products table is based on the testing profile information, by applicable unit of Equipment, provided to Sysmex by Customer, as set forth in the Estimated Testing Profile table and assumes a monthly Fixed Delivery Date for delivery of reagent Products. Upon Customer's request, Sysmex or one of its authorized distributors will make available to Customer additional reagent Products, in a quantity Sysmex reasonably determines is commensurate with an increased number of reportable tests, at no additional charge. Any additional reagent Products in excess of such quantity Sysmex reasonably determines is necessary due to increased volume may be available to Customer at a mutually agreed upon cost. Additional quality control Products, if requested by Customer, may be available from Sysmex or one of its authorized distributors at a mutually agreed upon cost.

Urinalysis Estimated Testing Profile								
Site Name	Equipment	UA Micros/Day	UA Chem Strips/Day	% Repeat	% Review	Days/Week	Weeks/Year   Shifts/Day	Reportable Tests /Yr
San Gorgonio Memorial Hospital	UN2000AN-011BENCH Group	33	33	5	0	7	52 1	12,045

Provided Customer is not in Default under this Agreement, Sysmex shall provide to Customer monthly shipments of reagent Products in Fixed Delivery Date orders aggregating on an annual basis to the quantities set forth in the List of Products table or as amended by Customer in this Agreement or via updated purchase order. It is acknowledged that ALL QUALITY CONTROL AND CALIBRATOR PRODUCTS ARE LIMITED TO THE ANNUAL QUANTITIES SET FORTH IN THIS AGREEMENT.

**f. Training.** Virtual Instructor-Led Training ("VILT"), when available, is offered for all operators through Sysmex's Center for Learning Customer Resource Center ("CRC"). VILT allows Customer's staff to be trained by Sysmex's instructors without Customer's employees leaving their laboratory. Live, interactive, "hands on" training is conducted from the CRC via an internet streaming connection. Self-paced e-Learning training, where applicable, is available on-line 24/7 through Sysmex's CRC. Customer may complete basic training and advanced training via VILT, in combination with e-learning.

Training		
Site Name	Model #	Training
San Gorgonio Memorial Hospital	UN2000AN-011BENCH	VILT

**g. Service.** Commencing on the applicable Equipment Acceptance Date and for one (1) year thereafter, Sysmex shall provide to Customer BeyondCare Service as defined in the Service Programs Exhibit, for each unit of Equipment purchased under this Agreement identified in the table (the "Service Warranty"). At the expiration of the Service Warranty, Customer shall receive BeyondCare Service at the annual rate listed in the Service Price/Year column below.

Service						
Site Name	Service Type	Total Service Warranty (months)	Price / Year	Service Adjustment (%)	Net Price / Year	Total Agreement Price
San Gorgonio Memorial Hospital	UN2000AN-011BENCH Group - UN2000-011 BeyondCare, Remote	12	\$19,395.00	-25.00%	\$14,546.25	\$58,185.00

The total cost of Beyond Care Service shown in the Total Agreement Price column above shall be allocated equally among the total number of months in the Initial Term and invoiced and payable on a monthly basis commencing on the month in which the first monthly payment for the Equipment occurs. By way of example, for an Agreement term of five (5) years with a Total Service Cost of sixty dollars (\$60.00) for years two (2) through five (5) of the Agreement, Customer would be invoiced a monthly amount of \$1.00 for BeyondCare Service each month of the Agreement throughout the Initial Term. In the event is Agreement extends beyond the Initial Term, BeyondCare Service shall continue to be invoiced and payable on a monthly basis at then-current rates.

Service performed by Sysmex in connection with the Equipment acquired hereunder that is not subject to a valid agreement for Service (including, but not limited to, Service performed after the expiration of this Agreement and any Service performed on a time and materials basis) shall be governed by Sysmex's then-current terms and conditions for Service.

Sysmex has no obligation to offer an agreement for service or provide service of any kind for offerings that have been discontinued and/or when an end of life or end of support communication has been issued. Sysmex reserves the right to terminate any Service agreement for such offerings and provide Customer a prorated refund.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF, Sysmex and Customer have caused their duly authorized representatives to execute this Agreement.

**AGREED AND ACCEPTED:**

Systemex America, Inc.

San Gorgonio Memorial Hospital

\_\_\_\_\_  
Systemex Representative Signature

\_\_\_\_\_  
Customer Representative Signature

\_\_\_\_\_  
Systemex Representative Name Printed

\_\_\_\_\_  
Customer Representative Name Printed

\_\_\_\_\_  
Systemex Representative Title

\_\_\_\_\_  
Customer Representative Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## SECTION III: TERMS AND CONDITIONS

### 1. TERM and TERMINATION

**a. Term.** The Cost-Per Reportable Lease Agreement ("**Lease Agreement**") for each unit of Equipment acquired under this Agreement shall commence on the "**Lease Agreement Effective Date**" for such unit of Equipment (defined as the Equipment Acceptance Date of a unit of Equipment,) and continue for a period of [60] months thereafter (the "**Initial Lease Term**"). If, and only if, a Lease Agreement replaces an existing lease agreement between Customer and Sysmex, the payment obligations hereunder shall first become due and payable the earlier of (i) the termination date of the lease agreement being replaced; (ii) the date the Customer provides notice to Sysmex the Equipment is being used to report patient test results; or (iii) ninety-one (91) days from the Lease Agreement Effective Date. For the purpose of clarity, payment obligations shall commence on the Lease Agreement Effective Date. After expiration of the Initial Lease Term, a Lease Agreement shall automatically renew for successive calendar-month periods, unless either Party notifies the other Party in writing, at least thirty (30) days prior to the end of any calendar month, of its intention to terminate a Lease Agreement. (The Initial Lease Term and any successive calendar-month period shall be referred to collectively as the "**Lease Term**"). In the event of termination of this Agreement during the Lease Term, the provisions of this Agreement shall survive and be deemed incorporated into the Lease Agreement until such time such the Lease Agreement is terminated or expires. For the purpose of clarity, the Initial Lease Term for each unit of Equipment acquired under this Agreement may vary based on the applicable Equipment Acceptance Date.

**b. Termination.** In the event of a Default, as defined in the Default section herein, or termination prior to the expiration of the Initial Lease Term for any reason other than Customer's termination due to a Sysmex Default, Sysmex may exercise, in addition to any other right or remedy in this Agreement, one or more of the following remedies (a) cancel or terminate this Agreement as to any or all of the Equipment; and (b) require Customer to immediately pay damages in an amount equal to the unpaid portion of the Total Agreement Amount for the Initial Lease Term as reflected in the Pricing Summary table; (c) require Customer to deliver the Equipment to Sysmex as set forth herein; (d) repossess the Equipment without court order or other process of law and in such case, Customer hereby releases all claims and rights of action for damages or trespass or any other reason and Customer agrees not to make any claims against Sysmex with respect to same; and (e) exercise any other right or remedy available at law or in equity. Customer will pay all costs associated with the enforcement of Sysmex's rights, including, without limitation, reasonable legal fees and court costs.

### 2. INSTALLATION and ACCEPTANCE of EQUIPMENT, USE and SERVICE

**a. Installation and Acceptance.** Sysmex will deliver and install the Equipment listed in this Agreement to the Customer address or addresses set forth as the "Ship to Address" in the applicable document or such other location of which Customer subsequently notifies and Sysmex agrees to in writing, provided each such location meets the suitability requirements for such Equipment described in the applicable operator's manual (each, an "**Approved Location**"). Upon Sysmex's completion of the installation for each unit of Equipment (excluding Non-ICN Equipment delivered hereunder, in accordance with the Equipment implementation work plan, Sysmex will provide Customer an Installation Completion Notice (the "**ICN**"). The Equipment shall be deemed irrevocably accepted by Customer as of (i) the date of the ICN; or (ii) for Non-ICN Equipment, as of the date it is received at the Customer's site (the "**Equipment Acceptance Date**"). Notwithstanding the foregoing, Customer shall have three (3) business days after the date of the ICN, or receipt at Customer site for Non-ICN Equipment, to reject such Equipment, in writing, as failing to perform in all material respects in accordance with the applicable manufacturer's operator's manual & specifications. "**Non-ICN Equipment**" shall include all Equipment not installed by Sysmex.

**b. Use.** Customer shall not use the Equipment to report patient results prior to the Equipment Acceptance Date therefor, after which Customer shall use the Equipment and the related Products only in accordance with instructions contained in the manufacturer's operator's manual, software licenses and other published materials and labeling, which may be amended from time to time by Sysmex or the manufacturer. Customer shall not, directly or indirectly, modify, change or adulterate any Equipment (including any software included therein or provided in connection therewith) or Product in any manner. Sysmex has no obligation to provide service of any kind for Equipment in use at a location other than an Approved Location. For Equipment owned by Sysmex, Customer agrees not to remove the Equipment from the Approved Location(s) unless (a) Customer has provided Sysmex's Contract Administration Department with at least thirty (30) days prior written notice of Customer's intent to relocate the Equipment (such notice shall include the location to which the Equipment will be relocated) and (b) Customer has obtained the prior written consent to such relocation from Sysmex. Customer hereby agrees to use the Equipment only in accordance with instructions contained in the operator's manual, which may be amended from time to time, and only use said Equipment with reagent Products recommended by Sysmex.

**c. Service.** The term "Service" shall include (i) the certain services described in the Sysmex Service Programs Exhibit; and (ii) professional services, including but not limited to, implementation and installation services for Equipment, software, subscriptions, including but not limited to Caresphere Workflow Solutions and Sysmex Validation Services and any other services provided in relation to Sysmex products.

### 3. DELIVERY, SHIPPING CHARGES, RISK of LOSS, INSURANCE

The shipment and delivery of all Equipment and Products hereunder shall be subject to Sysmex's Shipping, Handling and Return Goods Policy Exhibit, a copy of which is attached hereto.

### 4. PAYMENT TERMS

If requested by Sysmex, Customer shall submit a credit application and provide such other financial information reasonably requested by Sysmex, in which event Sysmex's obligations hereunder shall be subject to its receipt and approval of such credit application and other information, together with receipt of any advance payment that may be required under this Agreement. All amounts payable by Customer under this Agreement shall be due net Thirty (30) days from Sysmex's invoice date. The preferred method of payment is "Automated Clearing House" (ACH, CTX format); provided that Sysmex also will accept payment by Electronic Funds Transfer (EFT) check or wire transfer, but not cash or any other method. All payments shall be made solely in U.S. dollars by either check or wire transfer, unless otherwise agreed by the Parties in their sole and absolute discretion. If all or any part of a payment is more than ten (10) days late, Sysmex may charge Customer interest on the portion that is late in an amount equal to the lesser of (a) 1.5% per month and (b) the highest amount permitted by applicable law. Notwithstanding any provision of this Agreement to the contrary, Sysmex may offset any amounts to be paid to Customer under this Agreement against any amounts that such Customer may owe to Sysmex. Customer's payment obligations under this Agreement shall commence on (i) the date of shipment of Non-ICN Equipment; and/or (ii) monthly for all other Equipment, commencing on the applicable Equipment Acceptance Date and continuing throughout the CPR Agreement Term. The term "cost-per-reportable" or "CPR" means the rate invoiced for each clinical result or group of results within one event that is reportable to the patient's chart (each a "**Reportable Test**"). So long as Sysmex is not in material breach of its obligations hereunder, Customer's obligation to pay the amounts set forth herein shall be absolute and unconditional from and after the applicable Equipment Acceptance Date. Customer shall pay to Sysmex on a monthly basis the full amount payable hereunder based on Customer's actual Reportable Test count derived from its monthly usage of the Equipment reflected in reports created by Sysmex or provided by Customer as further described in the Test Count Submission Requirements Section (each a "CPR Report") multiplied by the "CPR: Total Cost-Per-Reportable" rate shown in the Pricing Summary table. Notwithstanding the foregoing, if Customer fails to use the Equipment to produce Reportable Tests within ninety (90) days after the Equipment Acceptance Date, Sysmex reserves the right to commence the Initial CPR Term and invoice Customer (i) the Equipment and Service billing monthly payment amount listed in the Pricing table until such time Sysmex receives CPR Reports; or (ii) the total CPR: Total Cost-Per-Reportable rate, multiplied by the Target Monthly Total Volume of Tests. Without limiting the generality of the foregoing, Customer's obligation to make payment to Sysmex hereunder is not subject to any delay by Customer for any reason in reporting patient results, including delays in clinical acceptance, LIS interfacing or other circumstances which restrict or prevent Customer's use of the Equipment.

If requested by Sysmex, Customer shall submit a credit application and provide such other financial information reasonably requested by Sysmex, in which event Sysmex's obligations hereunder shall be subject to its receipt and approval of such credit application and other information, together with receipt of any advance payment that may be required under this Agreement. All amounts payable by Customer under this Agreement shall be due net Thirty (30) days from Sysmex's invoice date. The preferred method of payment is "Automated Clearing House" (ACH, CTX format); provided that Sysmex also will accept payment by Electronic Funds Transfer (EFT) check or wire transfer, but not cash or any other method. All payments shall be made solely in U.S. dollars by either check or wire transfer, unless otherwise agreed by the Parties in their sole and absolute discretion. If all or any part of a payment is more than ten

(10) days late, Sysmex may charge Customer interest on the portion that is late in an amount equal to the lesser of (a) 1.5% per month and (b) the highest amount permitted by applicable law. Notwithstanding any provision of this Agreement to the contrary, Sysmex may offset any amounts to be paid to Customer under this Agreement against any amounts that such Customer may owe to Sysmex. Customer's payment obligations under this Agreement shall commence on (i) the date of shipment of Non-ICN Equipment; and/or (ii) monthly for all other Equipment, commencing on the applicable Equipment Acceptance Date and continuing throughout the CPR Agreement Term. The term "cost-per-reportable" or "CPR" means the rate invoiced for each clinical result or group of results within one event that is reportable to the patient's chart (each a "**Reportable Test**"). So long as Sysmex is not in material breach of its obligations hereunder, Customer's obligation to pay the amounts set forth herein shall be absolute and unconditional from and after the applicable Equipment Acceptance Date. Customer shall pay to Sysmex on a monthly basis the full amount payable hereunder based on Customer's actual Reportable Test count derived from its monthly usage of the Equipment reflected in reports created by Sysmex or provided by Customer as further described in the Test Count Submission Requirements Section (each a "CPR Report") multiplied by the "CPR: Total Cost-Per-Reportable" rate shown in the Pricing Summary table. Notwithstanding the foregoing, if Customer fails to use the Equipment to produce Reportable Tests within ninety (90) days after the Equipment Acceptance Date, Sysmex reserves the right to commence the Initial Lease Term and invoice Customer (i) the Equipment and Service billing monthly payment amount listed in the Pricing table until such time Sysmex receives CPR Reports; or (ii) the total CPR: Total Cost-Per-Reportable rate, multiplied by the Target Monthly Total Volume of Tests. Without limiting the generality of the foregoing, Customer's obligation to make payment to Sysmex hereunder is not subject to any delay by Customer for any reason in reporting patient results, including delays in clinical acceptance, LIS interfacing or other circumstances which restrict or prevent Customer's use of the Equipment.

## 5. TAXES & OTHER CHARGES

Unless Customer is a tax-exempt entity, Customer agrees that Customer will promptly pay, if and when due, all taxes (including, without limitation, all sales, use and personal property and other taxes (excluding income taxes payable by Sysmex for any consideration received hereunder) and any interest or penalties thereon), allowance costs and license and registration fees, if any, relating to the Equipment, Products, Service or any other item sold to Customer under this Agreement. If any such taxes, charges, costs or fees shall be assessed to Sysmex, then Sysmex may, in its sole discretion, pay the same and Customer shall promptly reimburse Sysmex, upon demand, for any such payment. If Customer is a tax-exempt entity, Customer shall provide Sysmex a tax-exemption certificate in form and substance satisfactory to Sysmex evidencing such Customer's tax-exempt status, and Sysmex will not include on its invoices to any such Customer any tax-exempt amount, provided that Customer shall remain solely liable for any taxes that may be due and payable if Customer is determined by any taxing authority to not be a tax-exempt entity.

## 6. COST-PER-REPORTABLE PARAMETERS

The criteria that forms the basis of this Agreement is determined utilizing reportable test results for the parameters included in each Reagent Chemistry Strip Product (each "**UA Chem Strip**"), which shall be the sole test that will qualify as a Reportable Test. Notwithstanding the foregoing, in the event UA Chem Strips are not acquired under this Agreement, UA Micros tests shall be the sole test qualifying as a Reportable Test under this Agreement.

Sysmex has relied on the test quantity usage profile information provided by Customer as set forth in here (including the Reportable Tests per Year information) as the basis upon which the reagent quantity and types have been established and the CPR: Total Cost-Per-Reportable rate computed. Customer represents that such profile information is true and correct in all material respects.

If Sysmex determines that Customer's actual usage of reagent, control or calibrator Products is greater than or inconsistent with the levels established in computing the CPR: Total Cost-Per-Reportable rate set forth in this Agreement, Sysmex may in its sole discretion and on reasonable notice to Customer (not to exceed thirty (30) days), audit and review Customer's books and records to determine Customer's actual utilization of such Products, and Customer hereby agrees to cooperate with Sysmex in connection therewith and provide to Sysmex all reports, documentation and information related to such tests, billing and usage.

## 7. CPR: TOTAL COST-PER-REPORTABLE ADJUSTMENTS

a. **Annual Review of CPR: Total Cost-Per-Reportable Rate.** The target number of "**Reportable Tests per Year**", as of the CPR Agreement Effective Date is reflected in the Customer Commitment Summary table. Following the first twelve (12) months of the CPR Agreement Term, and each anniversary thereafter during the CPR Agreement Term, Sysmex may, in its sole and absolute discretion, review the preceding twelve (12) months' monthly testing volume and calculate the Average Monthly Testing Volume ("**AMTV**") and the testing mix based on the number of procedures Customer has conducted and the testing mix in such preceding periods. If, based on such review, Sysmex confirms that the AMTV for such preceding twelve (12) month period varies from the then-established Target Monthly Total Number of Tests volume by more than ten percent (10%), then Sysmex may, in its sole and absolute discretion, establish a new CPR: Total Cost-Per-Reportable rate for the succeeding twelve (12) months. Sysmex shall notify Customer of any such adjusted CPR: Total Cost-Per-Reportable rate, and Customer agrees to pay Sysmex at the adjusted CPR: Total Cost-Per-Reportable pricing, if any.

b. **Reduction in Reportable Tests.** Notwithstanding any provision in this CPR Agreement to the contrary, if the monthly Reported Test volume is less than 70% of the "**Target Monthly Total Number of Tests**" (defined as Reportable Tests per Year divided by twelve (12) over any rolling three (3) calendar-month period), Customer shall promptly meet with Sysmex to review the reported testing volume and the Parties will determine an appropriate CPR: Total Cost-Per-Reportable rate based on the actual reported volume.

Sysmex reserves the right to validate the data capture accuracy of the LIS reports at any time including initial installation, installation or modification of software or hardware or any change in LIS vendor. Customer agrees to notify Sysmex promptly (i) upon the occurrence of any of the foregoing events or (ii) prior to any resetting of the LIS system which may affect the accuracy of reporting. Customer shall authenticate results via submission of monthly LIS reportable billing reports, supplemented as necessary, to provide an accurate count of results.

## 8. TEST COUNT SUBMISSION REQUIREMENTS

a. Customer will allow Sysmex to utilize the Sysmex Network Communication System "SNCS" to obtain the quantities and types of Reportable Tests performed on installed Equipment no later than the eighth (8th) calendar day of month for use in the preceding calendar month in which such Reportable Tests were (each a "CPR Report"). Sysmex will invoice Customer and Customer agrees to pay the amount equal to the reported test counts in the monthly CPR Report multiplied by the CPR: Total Cost-Per-Reportable Rate.

b. In the event Sysmex is unable to obtain a monthly CPR Report using SNCS, Sysmex shall invoice the greater of (i) the average number of Reportable Tests over the prior two (2) months multiplied by the CPR: Total Cost-Per-Reportable rate; (ii) the last monthly report where no disconnection occurred; or (iii) the Target Monthly Total Volume of Tests multiplied by the CPR: Total Cost-Per-Reportable rate.

c. Sysmex retains the right to review volumes to verify accuracy at any time. SNCS connectivity for the Equipment is required for Sysmex to obtain CPR Reports. The Customer Obligations set forth in the Sysmex Remote Access Terms and Conditions shall apply to the Test Counts Submission Requirements Section. Any dispute regarding a monthly CPR Report obtained by Sysmex must be reported by the Customer within thirty (30) days of the date of invoice.

d. In the event that i) Sysmex is unable to obtain CPR Reports for two (2) consecutive months or ii) the Equipment has been enabled with the ability, but is unable to transmit CPR Reports via SNCS, Sysmex reserves the right to require Customer to submit reports setting forth the quantity and type of Reportable Tests performed on the Equipment electronically or by fax as designated by Sysmex or in the form provided to Customer by Sysmex (including, if requested by Sysmex, formats necessary to provide LIS reportable billing reports on the number and type of tests performed on a current and cumulative basis) which shall also be considered CPR Reports under this Agreement. Such CPR Reports shall be delivered to Sysmex no later than the eighth (8th) day of the month for usage in the preceding calendar month in which such Reportable Tests are performed. Sysmex will invoice Customer and Customer agrees to pay an amount equal to the Reportable Test counts multiplied by the CPR: Total Cost Per Reportable rate. For Equipment Sysmex has not enabled with the ability to pull CPR Reports via

SNCS, the Customer must submit monthly CPR Reports pursuant to this section. For greater clarity, monthly invoices may include Reportable Test obtained both using SNCS and in a CPR Report submitted by Customer for Equipment not enabled with the ability to pull CPR Reports via SNCS.

e. In no case will Customer pay an amount less than the Minimum Monthly Billing (Equipment, Service and, if applicable, Informatics components only). If at any time during the CPR Term subsequent to (i) Sysmex obtaining CPR Reports from SNCS containing Reportable Tests; or (ii) Sysmex receipt of a Customer CPR Report for each applicable unit of Equipment if the the required CPR Reports obtainable by Sysmex do not contain Reportable Tests or CPR Reports are not received from Customer in the above stated time frames, Sysmex will invoice Customer and Customer agrees to pay an amount equal to 110% of the Target Monthly Total Number of Tests multiplied by the CPR: Total Cost-Per-Reportable rate. No adjustment to invoiced amounts or Reported Test counts will be made after the delinquent month(s) invoice has been issued.

f. If payment of the monthly invoice is not received within sixty (60) days of the invoice date (unless otherwise stipulated by the Parties), without limiting any other rights or remedies Sysmex may have under this CPR Agreement, the Agreement or applicable law, Sysmex may place the Customer on "cash in advance" terms immediately, and within fifteen (15) days thereafter on "credit hold" which will hold all shipments and supply of reagent and controls Products and future Equipment until Customer's account is brought to "current" status and Customer is deemed credit-worthy as determined by Sysmex in its sole and absolute discretion. Service Agreements affected by this "credit hold" will be switched to "Time and Material" billings, cash in advance.

#### **9. GPO DESIGNATION POLICY**

If Customer is a member of a GPO that is a party to a GPO agreement to which Sysmex is a party, the pricing of Equipment and Products is based upon the GPO Membership Affiliation Designation form submitted with this Agreement or, if the applicable GPO agreement does not require submission of such a form, compliance with the membership designation procedure in the applicable GPO Agreement (collectively, the "**GPO Affiliation Designation**"). Changes to Customer's membership designation (e.g., applicable pricing tier, GPO affiliation) must be supported by a revised GPO Affiliation Designation, and must be received by Sysmex's Sales Services Department within thirty (30) days of the change. Upon confirmation of Customer's change in GPO affiliation, the terms and conditions of Customer's purchases (including, by way of illustration and not limitation, payment terms, Parts as defined in the Limited Warranty, Disclaimer and Limitation of Liability Section herein, service rates, Equipment and Product prices, etc.) occurring after the change (based on the date of Sysmex's invoice with respect to such sales) will be those in the GPO agreement with the newly-designated GPO within thirty (30) days, subject to any applicable limitations and restrictions imposed by Customer's previous GPO.

#### **10. TITLE AND RECORDING**

Sysmex or any such third party to whom Sysmex conveys title to the Equipment will hold title to the Equipment throughout the Lease Term. Sysmex shall file any UCC-1 documentation on behalf of the Equipment owner. CUSTOMER HEREBY AUTHORIZES AND DESIGNATES SYSMEX AS ITS ATTORNEY IN FACT TO PREPARE AND FILE, ON CUSTOMER'S BEHALF FINANCING STATEMENTS COVERING THE EQUIPMENT. Customer shall keep all Equipment free from all other liens and encumbrances.

#### **11. INSURANCE**

Customer is responsible for any loss, destruction or damage to the Equipment from any cause whatsoever, whether or not insured, from the time the Equipment is delivered to Customer until Sysmex retakes possession thereof or title to Equipment transfers to Customer. NO SUCH LOSS, DESTRUCTION OR DAMAGE SHALL IMPAIR, LIMIT OR DELAY THE PERFORMANCE OF CUSTOMER'S PAYMENT OR OTHER OBLIGATIONS HEREUNDER, AND THIS AGREEMENT SHALL CONTINUE IN FULL FORCE & EFFECT NOTWITHSTANDING THE OCCURRENCE OF ANY SUCH LOSS, DESTRUCTION OR DAMAGE. Customer shall keep and maintain at its expense, effective from the date the Equipment is delivered to Customer until the date Sysmex retakes possession of the Equipment or title to the Equipment transfers to Customer (a) property insurance against the loss, theft or damage to the Equipment for its full replacement value, naming Sysmex as the beneficiary and additional named insured, and (b) general commercial liability insurance, including products liability and contractual liability, naming Sysmex as an additional insured, covering each occurrence of bodily injury, property damage or other injury in an amount of not less than \$1,000,000 per occurrence and not less than \$2,000,000 dollars in the aggregate per period of insurance. Such insurance shall be in a form, amount and with companies acceptable to Sysmex, and will provide that Sysmex will be given thirty (30) days' advance notice of any cancellation or material change of such insurance. Further, such insurance shall apply primary to, and non-contributory with, Sysmex's own insurance coverage. Upon Sysmex's request, Customer will provide Sysmex with a certificate or other evidence of such insurance.

Sysmex shall keep and maintain Comprehensive General Liability Insurance in an amount of not less than \$1,000,000 per occurrence and not less than \$2,000,000 dollars in the aggregate per period of insurance

#### **12. RETURN OF EQUIPMENT**

Upon the termination of the later of this Agreement or any CPR Agreement for any reason (including, without limitation, the conclusion of the applicable Initial CPR Agreement Term), at Customer's expense, Sysmex or its designee shall decontaminate, uninstall and remove the Equipment from Customer's premises; provided, however, that Sysmex shall not have any obligation to decontaminate, uninstall or remove any Equipment that was used or otherwise made available, directly or indirectly, at a Prohibited Use Site. The Equipment shall be in good condition, repair and working order, ordinary wear and tear accepted. Customer hereby authorizes Sysmex or its designee to enter Customer's premises, during Customer's normal business hours, and releases and holds harmless Sysmex or its designee from any and all claims and rights of action for trespass relating to Sysmex's repossession of the Equipment. If Customer shall have affixed or installed any improvement to the Equipment, Customer will, on or before the date the Equipment is returned to Sysmex and at Customer's expense, remove such improvement if requested to do so by Sysmex and repair any damage caused by such improvement or its installation or removal. If Customer fails for any reason to permit the removal of the Equipment, or any portion or component thereof, as required hereunder, Sysmex shall have the right, at its election, to extend the term of the applicable agreement on a month-to-month basis until the Equipment is returned by Customer to Sysmex as provided herein, in which case Sysmex shall invoice Customer and Customer shall pay the monthly invoiced amount during such extension period equal the Minimum Monthly Billing amount. Each monthly installment of such CPR Agreement amount shall be due and payable in full, without reduction, proration or set-off, for each month or partial month following the expiration of the applicable original term until the Equipment is returned as required hereunder.

#### **13. PURCHASE OPTION**

Provided this Agreement is not terminated early by Sysmex pursuant to the Default Section, at the end of the Initial CPR Term, Customer shall have the right to purchase the Equipment for a price equal to the Fair Market Value (as defined below) of the Equipment (the "**Option Price**") by notifying Sysmex of Customer's exercise of such right and of Customer's election of such right to purchase and submitting to Sysmex Customer's purchase order in the amount of the Option Price, plus applicable taxes, at least sixty (60) days prior to the expiration of the Initial CPR Term. Upon Sysmex's receipt of Customer's notice, Sysmex shall issue an invoice to Customer for such purchase and shall, following Customer's payment in full of the invoiced amount (plus any other amounts outstanding under this Agreement), transfer title to the Equipment to Customer. For purposes of determining the Option Price, "**Fair Market Value**" shall mean the aggregate amount which would be obtainable in an arm's length transaction between an informed and willing Customer and an informed and willing Sysmex under no compulsion to sell as determined by an appraiser selected by Sysmex and who is experienced in appraising equipment similar to the Equipment.

#### **14. DEFAULT**

Each of the following is a "**Default**" under this Agreement: (a) Customer fails to pay any amount due hereunder, which failure is not cured within ten (10) calendar days of notice thereof by Sysmex; (b) either Party breaches, or fails to perform any other obligations under this Agreement and does not cure such breach or failure within sixty (60) days after having been notified thereof by the other Party; and (c) either Party becomes insolvent, dissolves or assigns its assets for the benefit of its creditors, voluntarily files a petition under bankruptcy or insolvency law, or has involuntarily filed against it a petition under bankruptcy or insolvency law, unless such petition is dismissed within sixty (60) days, and (d) in the case of lease

Equipment (i) Customer fails to furnish Sysmex any test-count or other report required under this Agreement (if any) which failure is not cured within thirty (30) days of notice or (ii), any writ or order of attachment, execution or other legal process against Customer is levied on any or all of the Equipment and is not released or satisfied within ten (10) days. If a Default occurs, in addition to any other rights or remedies such Party may have at law or in equity, the Party not in Default may terminate this Agreement immediately upon notice to the Party in Default.

#### 15. INDEMNIFICATION

Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, and its officers, directors, employees and agents (each, an "Indemnified Party"), from and against any and all Damages (as defined below) incurred or suffered by any Indemnified Party due to a claim or allegation of an unaffiliated third party directly and proximately resulting from any breach of any representation or warranty or performance obligation of the Indemnifying Party hereunder or the willful misconduct or gross negligence of the Indemnifying Party, except to the extent (a) such Damages arise from the breach hereof by, or the negligence or wrongful acts or omissions of, the Indemnified Party or (b) the Indemnifying Party was not notified timely of any such claim or allegation, but only to the extent that the Indemnifying Party was actually prejudiced thereby.

In addition, Sysmex shall indemnify, defend and hold harmless Customer and its officers, directors, employees and agents from and against any Damages incurred or suffered by any such Indemnified Party due to a claim or allegation of a third party that any Equipment or Product infringes any U.S. patent, copyright, trade mark, trade secret or other intellectual property right of any third party.

The term "Damages" as used herein means all demands, claims, actions or causes of action, assessments, losses, damages, costs, expenses, liabilities, judgments, awards, fines, sanctions, penalties, charges, and amounts resulting from, or agreed by the Indemnifying Party to be paid in settlement of, any unaffiliated third party claim or allegation, including, reasonable legal fees and costs and expenses of investigating any such claim or allegation. The Indemnified Party shall provide prompt written notice of any actual or alleged Damages subject to indemnification hereunder. The Indemnifying Party shall have the right to assume the sole defense of any claim or allegation as to which the Indemnified Party is to be indemnified hereunder. In the event a claim of infringement is brought in respect of any Equipment or Product, Sysmex's sole obligation shall be, at its election, to: (i) preserve the right to continue the use thereof; (ii) replace it with a non-infringing substitute; (iii) modify it so as to be non-infringing; (iv) take it back and refund to Customer the purchase price thereof; or (v) terminate this Agreement immediately upon notice to Customer. The Parties' indemnification obligations hereunder shall survive for the applicable statute of limitations period.

#### 16. CONFIDENTIAL INFORMATION

"Confidential Information" means the information provided by either Party ("Discloser") to the other Party ("Recipient") hereunder in written or other recorded form, and information provided verbally or visually, and identified in writing at the time of, or promptly following, disclosure as "Confidential" (or like designation), and all information which, by the nature thereof or the context in which it is disclosed should reasonably be considered confidential or proprietary. Without limiting the generality of the foregoing, the prices set forth in this Agreement, the Sysmex Supplied Software and the Sysmex QC Data, as defined in the Equipment, Product and Software License Data Section created by the Sysmex Supplied Software shall be deemed the Confidential Information of Sysmex, and any patient information obtained by Sysmex hereunder shall be deemed the Confidential Information of Customer. Recipient shall hold all Confidential Information of Discloser disclosed or acquired in connection herewith in strict confidence and shall not disclose any Confidential Information to any third party, other than to its employees, subcontractors and consultants who need to know such information and who are bound by restrictions regarding disclosure and use of such information comparable to and no less restrictive than those set forth herein. Recipient agrees to take all reasonable steps and to use the same protective precautions to protect the Confidential Information from disclosure to third parties as it takes with its own proprietary and confidential information. Neither Party shall, without the other Party's prior written consent, disclose any of the Confidential Information of the other Party to any person, except to its bona fide individuals whose access is necessary to enable such Party to exercise its rights hereunder. Notwithstanding the foregoing, Confidential Information excludes any information that Recipient proves (a) is or becomes publicly known through no act or omission of Recipient; (b) was rightfully known by Recipient before receipt from Discloser, (c) becomes rightfully known to Recipient without confidential or proprietary restriction from a source other than Discloser that does not owe a duty of confidentiality to Discloser with respect to such Confidential Information; or (d) is independently developed by Recipient without the use of or reference to the Confidential Information of Discloser. In addition, Recipient may use or disclose Confidential Information to the extent (i) authorized by this Agreement or approved by Discloser or (ii) Recipient is legally compelled to disclose such Confidential Information, provided, however, that prior to any such compelled disclosure, Recipient shall give Discloser reasonable advance notice of any such disclosure and shall cooperate with Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information of Discloser may cause irreparable harm and significant injury to Discloser, the extent of which may be difficult to ascertain and for which there may be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, shall have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Agreement without the necessity of posting any bond or other security. Recipient shall notify Discloser in writing immediately upon Recipient's becoming aware of any such breach or threatened breach. Upon any termination of this Agreement, or at any time at Discloser's request, Recipient shall promptly return to Discloser or destroy all materials (in written, electronic or other form) containing or constituting Confidential Information of Discloser, including any copies and extracts thereof, and Recipient shall promptly confirm in writing to Discloser the return or destruction of any Confidential Information pursuant to this section, provided that (i) nothing contained in this Agreement shall require Recipient to return or destroy any copies of Confidential Information that such Party is required by law to maintain or that is contained on any backup tape or other archival medium that is not reasonably accessible to such Party, and (ii) Recipient shall be permitted to keep, for its internal records only, records of any exchanges of Confidential Information that may have taken place hereunder. The obligations of this section with respect to any item of Confidential Information shall survive any termination or expiration of this Agreement and continue for five (5) years from the date of Recipient's receipt of such Confidential Information, unless the Confidential Information or any part thereof constitutes a trade secret under applicable law, in which case the confidentiality obligations with respect to such trade secrets shall continue for so long as such Confidentiality Information constitutes a trade secret under applicable law.

#### 17. LIMITED WARRANTY, DISCLAIMER and LIMITATION OF LIABILITY

##### (a) Limited Warranty.

i) Equipment and Products. Sysmex warrants that: (i) the Equipment and the Products furnished under this Agreement will meet the manufacturer's published specifications and labeling when used in accordance with manufacturer's operator's manuals and labeling instructions, for the period of one (1) year after the Equipment Acceptance Date, in the case of Equipment for the period of ninety (90) days in the case of parts provided in connection with Service ("Parts") and for the period specified in the applicable labeling, in the case of Products; and (ii) the Equipment will be free from defects in material and workmanship. This warranty does not cover any malfunction or damage due to (x) accident, neglect or willful mistreatment of the Equipment, parts or other Products, (y) failure to use, operate, service or maintain the Equipment, parts or other Products in accordance with Sysmex's or the manufacturer's applicable operator's manuals and labeling instructions, or (z) failure to use or apply appropriate Products in or to the Equipment and Parts.

ii) Services. Sysmex warrants that the Service provided under this Agreement shall be performed in a workmanlike manner and will be free from defects of workmanship for a period of thirty (30) days from the date of Service.

iii) For greater clarity, the Service of Equipment and Parts, in addition to the provision of Service, shall be covered under the terms of any valid agreement for Service (which shall include, but is not limited to, the Service Warranty and Service acquired under this Agreement) for the period of the applicable valid Service agreement.

(b) **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, SYSMEX MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY EQUIPMENT, PARTS OR PRODUCT, SYSMEX SUPPLIED SOFTWARE, OR ANY SERVICE OR TRAINING WITH RESPECT THERETO. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITED WARRANTY PROVIDED UNDER THIS AGREEMENT SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY

DISCLAIMED AND EXCLUDED. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SYSMEX'S INDEMNIFICATION, SERVICE AND/OR WARRANTY OBLIGATIONS HEREIN APPLY TO THE EXTENT ANY CUSTOMER ISSUE OF ANY KIND ARISES FROM CUSTOMER'S USE OF EQUIPMENT, PRODUCTS, SOFTWARE AND/OR SERVICES THAT ARE NOT SOLD, DISTRIBUTED OR PROVIDED BY SYSMEX. IN THE EVENT SERVICES AND/OR SOFTWARE PROVIDED UNDER THIS AGREEMENT ARE USED WITH EQUIPMENT, SOFTWARE, OR PRODUCTS UNDER A SEPARATE AGREEMENT, WHETHER FROM SYSMEX OR ANY OTHER SOURCE, THE PARTIES AGREE THE SOLE AGREEMENT APPLICABLE TO THE SERVICE AND/OR SOFTWARE ACQUIRED HEREUNDER SHALL BE THIS AGREEMENT. IN NO EVENT SHALL SYSMEX BE LIABLE FOR DAMAGES ARISING FROM THIS AGREEMENT TO THE EXTENT SUCH DAMAGES ARISE FROM CUSTOMER'S FAILURE TO USE THE EQUIPMENT AND/OR PRODUCTS IN ACCORDANCE WITH SYSMEX AND/OR THE APPLICABLE MANUFACTURER'S MANUALS AND RECOMMENDED GUIDELINES OR PROCEDURES.

**(c) Limitation of Liability.** EXCEPT FOR SYSMEX'S INDEMNIFICATION OBLIGATIONS, SYSMEX'S SOLE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT OR THE BREACH THEREOF IS LIMITED TO, AT SYSMEX'S ELECTION, THE REPERFORMANCE OF SERVICE OR THE REPAIR OR REPLACEMENT OF, OR REFUND OF THE PURCHASE PRICE PAID BY CUSTOMER FOR ANY SERVICE OR ANY EQUIPMENT, SYSMEX SUPPLIED SOFTWARE, OR PRODUCTS THAT DO NOT CONFORM TO THE SPECIFICATIONS OR LABELING THEREFOR, SYSMEX SHALL NOT BE LIABLE FOR CUSTOMER'S DATA INPUT IN ANY SUBSCRIPTION SERVICE AND CUSTOMER WILL HOLD SYSMEX HARMLESS AGAINST ANY DAMAGE CLAIMED IN RELATION TO THE USE OF SUCH DATA. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOSS OF GOODWILL, LOSS OF PROFITS, WORK STOPPAGE OR BUSINESS INTERRUPTION, DATA LOSS OR COMPUTER FAILURE, AND EACH PARTY'S MAXIMUM LIABILITY HEREUNDER, EXCLUDING EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, SHALL BE THE NET AMOUNT SYSMEX RECEIVED FROM CUSTOMER IN THE PRECEDING TWELVE (12) MONTHS, LESS ANY REIMBURSEMENTS OR REBATES PAID OR CREDITED BY SYSMEX TO CUSTOMER.

The foregoing exclusions shall apply regardless of whether such Damages are sought for breach of warranty, breach of contract, negligence, strict liability in tort or under any other legal theory; provided that Sysmex shall be liable for any personal injury or property damage suffered by Customer or its employees caused by the grossly negligent or intentionally wrongful acts or omissions of Sysmex or its employees or contractors when installing or servicing the Equipment or providing training in connection therewith. Notwithstanding anything contained in this Agreement to the contrary, Sysmex shall have no obligation to provide (i) installation, maintenance or service (including BeyondCare Service, as defined in the Sysmex Service Program Exhibit) of or for any third party computer system hardware, software or interface or network connectivity; (ii) installation, maintenance or service (including BeyondCare Service) of or for water supplies, line conditioners, utilities, plumbing hardware or other OEM accessories or any other product or service not expressly identified herein; or (iii) any update, upgrade, enhancement, improvement or modification to any Equipment, Product, or Service provided hereunder, except as may be required to cause any such Equipment, Product or Service to perform in accordance with the applicable specifications or labeling (or pursuant to the express terms of any service or maintenance agreement to which Sysmex is a party) during the period of any valid agreement for Service.

#### 18. DISCOUNT DISCLOSURE

Regulations implementing the federal health care program anti-kickback law, 42 U.S.C. § 1320a-7b(b), include a "safe harbor" for "discounts" (see 42 C.F.R. § 1001.952(h)). To the extent that Sysmex provides a price reduction to a Customer pursuant to this Agreement, then Sysmex shall comply with the requirements set forth in 42 C.F.R. § 1001.952(h)(2). The pricing in this Agreement represents the actual amounts payable for the Equipment, Products, Service and Training provided by Sysmex hereunder and may reflect a discount off the published list price of the goods or services. Customer acknowledges and agrees that any payment or rebate it may receive pursuant to this Agreement shall constitute rebates, insofar as the same are based upon net purchases by Customer. There are no additional discounts of whatsoever kind, whether in the form of rebates, coupons or credits. Customer shall fully and accurately report (and shall be solely liable for reporting) as a discount or rebate (or otherwise) the specified dollar value of any payment provided by Sysmex hereunder to Customer's state, federal or third party private payors in accordance with the requirements of all Medicare/Medicaid Anti-kickback statutes and regulations and all other applicable laws and regulations, and Customer shall retain all documentation related thereto, which shall be timely provided to any governmental regulatory authority or body upon request. Upon request of Customer, Sysmex will provide Customer with a year-end reconciliation statement which reflects the percentage discount and the total amount of the discount earned during the year for Product classes purchased by Customer to which the discount applies for payment and cost reports submitted to the applicable federal or state agency.

#### 19. FORCE MAJEURE

Neither Party shall be liable for any failure to perform any of its obligations hereunder, other than the obligation to make any payment when due, to the extent that such failure is due to fire, flood, earthquakes, strikes, labor troubles, allocation events, failure of suppliers or other industrial disturbances, governmental acts, accidents, wars (declared or undeclared), terrorist acts, embargoes, blockades, legal restrictions, riots, insurrections, epidemics, pandemics, deadly or materially harmful infectious diseases, or any cause beyond the control of such Party for the period that such event or occurrence continues. The affected Party shall, to the extent commercially practicable, notify the other Party of the situation from time to time.

#### 20. EQUIPMENT, PRODUCT and SOFTWARE LICENSE DATA

Customer acknowledges and agrees that any software that is embedded in or supplied in connection with any Equipment or other Products or otherwise supplied by Sysmex hereunder (the "Sysmex Supplied Software"), including without limitation any intellectual property rights included therein, is and shall remain solely owned by Sysmex or its affiliates or licensors. Customer shall use the (i) Equipment; (ii) Products and (iii) Sysmex Supplied Software in accordance with Sysmex's or its affiliates' or licensors' documentation, instructions, agreements and/or labeling therefor. Further, Customer shall use the Sysmex Supplied Software solely in connection with the operation and use of the Equipment or other Products supplied hereunder. Customer shall not reproduce, modify, adapt, translate, reverse engineer, decompile, disassemble, translate or otherwise attempt to discover the source code of, or assign, sublicense, transfer, pledge, lease, rent, sell or otherwise distribute any Equipment, Products and/or Sysmex Supplied Software. Customer represents and warrants that it intends to use the Equipment, Products and Sysmex Supplied Software for its own account and has no intention to resell any Equipment, Products and/or Sysmex Supplied Software to any person or entity. Customer acknowledges that the Sysmex Supplied Software may generate quality management, control and usage data (the "Sysmex QC Data") that does not contain any of the direct and indirect personal identifiers enumerated in 45 C.F.R. 164.514(b)(2)(i) which may be used by Sysmex for product development, research, diagnostic, validation, control and all other purposes in accordance with applicable law. Customer shall not attempt to access or use any Sysmex QC Data, which shall be solely owned by Sysmex or applicable manufacturer. Except for Customer's limited right to use the Equipment, Products, and Sysmex Supplied Software as expressly provided herein, Customer hereby disclaims any right, title or interest in or to the Equipment, Products, Sysmex Supplied Software, and Sysmex QC Data. The terms and conditions hereof are in addition to and shall in no way limit or restrict the terms and conditions set forth in any click wrap, shrink wrap or other license agreement to which the Sysmex Supplied Software may be subject. If Customer licenses Caresphere Workflow Solution or Sysmex Validation Services hereunder additional license and use terms applicable thereto apply as are set forth in the Informatics Exhibit and the Terms of Service, which are hereby incorporated by reference and made a part hereof.

#### 21. GOVERNING LAW

This Agreement (including all Exhibits attached hereto) shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of laws principles thereof.

## 22. DISPUTE RESOLUTION

IF A DISPUTE ARISES FROM OR RELATES TO THIS AGREEMENT OR THE BREACH THEREOF, AND IF THE DISPUTE CANNOT BE SETTLED THROUGH DIRECT DISCUSSIONS, THE PARTIES AGREE TO ENDEAVOR FIRST TO SETTLE THE DISPUTE BY MEDIATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL MEDIATION PROCEDURES BEFORE RESORTING TO ARBITRATION. THE PARTIES FURTHER AGREE THAT ANY UNRESOLVED CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR BREACH THEREOF, SHALL BE SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PLACE OF ARBITRATION SHALL BE CHICAGO, ILLINOIS. HEARINGS WILL TAKE PLACE PURSUANT TO THE STANDARD PROCEDURES OF THE COMMERCIAL ARBITRATION RULES THAT CONTEMPLATE IN PERSON HEARINGS. THE ARBITRATOR(S) SHALL AWARD TO THE PREVAILING PARTY, IF ANY, AS DETERMINED BY THE ARBITRATORS, ALL OF THEIR COSTS AND FEES. "COSTS AND FEES" MEAN ALL REASONABLE PRE-AWARD EXPENSES OF THE ARBITRATION, INCLUDING THE ARBITRATORS' FEES, ADMINISTRATIVE FEES, TRAVEL EXPENSES, OUT-OF-POCKET EXPENSES SUCH AS COPYING AND TELEPHONE, COURT COSTS, WITNESS FEES, AND ATTORNEYS' FEES. THE ARBITRATION SHALL BE CONDUCTED IN CONFIDENCE. THE AWARD OF THE ARBITRATORS SHALL BE ACCOMPANIED BY A REASONED OPINION AND SHALL ALSO BE KEPT STRICTLY CONFIDENTIAL BETWEEN THE PARTIES AND ANY INDIVIDUALS OR ENTITIES REQUIRED TO EFFECT PAYMENT. NOTHING CONTAINED IN THIS SECTION WILL LIMIT EITHER PARTY'S ABILITY TO SEEK EQUITABLE RELIEF IN ANY COURT.

## 23. EXPORT CONTROL

The parties acknowledge that performance of this Agreement is subject to compliance with applicable United States laws, regulations and orders with regard to export and trade control, including without limitation those that may relate to the export of technical data and equipment, such as the Export Administration Act and the Export Administration Regulations promulgated thereunder and/or International Traffic in Arms Regulations of the United States, as amended from time to time, and any applicable laws, regulations and orders governing similar subject matter, and agree to comply with all such laws, regulations and orders. Without limiting the generality of the foregoing, Customer shall not export or reexport, directly or indirectly, any Equipment and Products (including any software) or any parts thereof or any information relating thereto to any country for which the U.S. Government or any agency thereof requires an export license or other governmental approval at the time of export or reexport without first obtaining such license or approval. Customer represents and warrants that neither Customer nor any person or entity controlling, controlled by or under common control with Customer, nor, to assignee's knowledge, any person or entity having a beneficial interest in Customer, nor any other person or entity on whose behalf Customer is acting: (i) is a person or entity listed in the annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism); or (ii) is named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control or the U.S. Bureau of Industry and Security Entity List.

## 24. PROHIBITED USE SITES

A "Prohibited Use Site" shall mean the installation or use of Equipment, at a site designated as a BSL-3 or higher BSL level location, as defined by the Center for Disease Control, or a site designated as a central or satellite laboratory with heightened protocols in place for the purpose of testing samples with known serious pathogenic risk requiring patient isolation or unique infection controls on behalf of other sites. Customer hereby represents, warrants, covenants and agrees that Customer shall not use the Equipment at a Prohibited Use Site. If any Equipment is used at a Prohibited Use Site, Customer shall immediately notify Sysmex thereof in writing, and, at Sysmex's sole election in its absolute discretion, Customer shall purchase such Equipment from Sysmex, with full payment due within thirty (30) days after Sysmex's invoice therefor, at a purchase price equal to the aggregate amount of the then-outstanding principal payments due under this Agreement plus the residual for such Equipment, and title and sole responsibility for such Equipment shall pass to Customer. For the purpose of clarity, this provision applies solely to Equipment used at a Prohibited Use Site.

## 25. ASSIGNMENT

Customer shall not sell, transfer, assign, or sublease this Agreement, in whole or in part (including in connection with any merger, reorganization or sale of Customer, or the transfer or sale to a third party of more than 50% of the voting securities or all or a substantial portion of Customer's assets), without Sysmex's prior written consent, which shall not be unreasonably withheld. No assignment of this Agreement shall relieve Customer of its obligations hereunder, and this Agreement shall be binding on and inure to the benefit of successors and assigns. Sysmex may sell, assign, encumber, or transfer this Agreement to another party without Customer's consent. Assignment does not alter Sysmex' obligations under this Agreement, and payments may be directed to assignee. Any purported transfer or assignment of this Agreement in breach of this paragraph shall be null and void.

## 26. MISCELLANEOUS

**a. Construction.** Capitalized terms defined or used herein shall apply equally to both the singular and plural forms of the terms defined. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." References herein to Sections and Paragraphs refer to sections and paragraphs of this Agreement, except as otherwise stated. This Agreement shall not be deemed as having been drafted by one Party or the other, and no term or condition hereof shall be more strictly construed against one Party by reason of any rule of construction or authorship. Notwithstanding any provision hereof to the contrary, Customer agrees that Sysmex is authorized to amend this Agreement to correct obvious errors or omissions in any exhibit or schedule attached hereto, including the calculation of amounts due by Customer hereunder, missing Equipment serial numbers or other erroneous or missing information.

**b. Entire Agreement.** This Agreement, including the Exhibits and Schedules attached hereto, which are hereby incorporated by reference and made a part hereof, constitutes the entire agreement between Sysmex and Customer regarding the subject matter hereof, superseding all prior oral or written agreements, policies, understandings, representations, warranties and negotiations, and there are no conditions affecting this Agreement that are not expressed herein.

**c. Order of Priority.** Customer may use its own form of purchase order, registration form or other documentation ("Customer PO") in connection with the purchase of Equipment, Products, Services or Parts hereunder, provided that no such Customer PO shall add to, vary or otherwise amend the terms and conditions hereof or the rights or obligations of the Parties. Any terms and conditions contained or referenced within a Customer PO that are not contained in this Agreement or a quotation provided by Sysmex, other than identification of products and/or pricing, are expressly excluded, not binding and shall be given no legal effect. If any terms and conditions of this Agreement are in conflict with any GPO Agreement, or a "Master Group Agreement" (including, but not limited to Integrated Healthcare Networks and Integrated Delivery Network Agreements) to which Sysmex and Customer are signatories or subject, the terms and conditions of this Agreement shall govern. In the event of a conflict or inconsistency among the governing documents and exhibits, the following order of priority shall apply, from highest to lowest: this Agreement, the remaining Exhibits and then the GPO Agreement or Master Group Agreement.

**d. Nature of Relationship.** Each Party is an independent contractor, not an agent or employee of the other Party, and each Party is solely responsible for all of its employees and agents. Neither Party is authorized to assume or create any obligation or responsibility, including obligations based on warranties or guarantees or other contractual obligations, on behalf or in the name of the other Party.

**e. Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held by an arbitrator or a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.

**f. No Waiver.** Failure by either Party to exercise its right to terminate this Agreement or any other right hereunder, in case of breach by the other Party of any provision of this Agreement, shall not constitute a waiver of any other provision of this Agreement or of any subsequent breach of the same provision.

**g. Survival.** The following sections hereof shall survive any expiration or termination of this Agreement for the respective periods specified therein, if any: Taxes and Other Charges, Default, Prohibited Use Sites, Trade-in Equipment, Insurance, Indemnification, Dispute Resolution, Confidential Information, Discount Disclosure, and the Equipment, Product and Software License Data provision.

**h. Notice.** Any notice required or permitted hereunder shall be provided in writing by a Party to the other Party at such other Party's address as listed below.

To Customer:

Insert Customer Name

Attention:

Insert Customer Address

With a copy to:

Sysmex America, Inc.

Attention: Legal Department

577 Aptakisic Road

Lincolnshire, Illinois 60069

**i. Counterparts and Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signatures made and delivered electronically shall be considered and treated as originals

**27. ADDITIONAL TERMS**

### Shipping, Handling & Returned Goods Policy Exhibit

**1. Equipment Delivery, Shipping, Risk of Loss and Insurance:** Delivery of Equipment will be shipped “**FOB Destination**”, using an Sysmex designated carrier. Sysmex shall be responsible for shipping charges, insurance, and damage occurring during transit. Risk of loss shall pass to Customer upon receiving dock. Title to the Equipment, if applicable, shall not pass to Customer until the applicable Equipment has been received and paid for by Customer pursuant to the terms & conditions of the agreement between Customer and Sysmex.

**2. Products:**

**(a) Product Delivery:** Product shipments for Fixed Delivery Date orders are FOB Origin, freight pre-paid by Sysmex using Sysmex’s designated carrier. Title and risk of loss shall pass to Customer upon delivery to Sysmex’s carrier. The cost of any supplemental order shipments outside of the pre-established Fixed Delivery Date shall be added to the applicable invoice and paid by Customer. Cost of emergency shipments shall be added to the applicable invoice and paid by Customer

**(b) Product Order Placement:** Sysmex and Customer will establish an order placement option per the guidelines below. If Customer’s pre-established Fixed Delivery Date in any given month falls on a national holiday or a weekend day, Customer will receive their order on the business day prior to the weekend or holiday. It is a requirement that all Customers set up a standing order for all quality control Products ordered under this Agreement, including calibrators (“**Quality Control Products**”). Changes to the sequestered order must be made ten (10) business days prior to the next scheduled delivery. Any supplemental orders submitted via GHX, EDI, Fax, Email or via phone requesting Quality Control Products must include a Purchase Order number that indicates which lot number is needed. In the event that the Purchase Order does not include the requested lot number and Customer requests a return of such Quality Control Products after shipment, Customer will be liable to pay for both the original and the subsequent shipment of Quality Control Products along with any associated freight charges.

Ordering Options	Customer Action	Benefit
Standing Order	Submit an annual purchase order to Sysmex Customer Service for Reagents and Quality Control Products	Once a month shipment, freight pre-paid Quality Control Products lot release shipments, freight pre-paid
Fixed Delivery Date	Confirm setup of agreed upon Fixed Delivery Date (“a specific date of the month”) <u>Reagents and Consumable Products:</u> Submit monthly purchase order 10 business days in advance of the fixed delivery date, through GHX (preferred) or directly to Customer Service <u>Quality Control:</u> Maintain Quality Control Products on a standing order	Once a month shipment, freight pre-paid Quality Control Products lot release shipments, freight pre-paid Shipment to deliver on or before pre-established delivery date. Order as needed Consolidated shipment

**3. Deliveries to Alaska, Hawaii, and Puerto Rico:** Delivery of Products to Alaska, Hawaii, and Puerto Rico, whether or not such deliveries are subject to Fixed Delivery Date orders, will be shipped F.O.B. Origin, freight pre-paid by Sysmex, added to the applicable invoice and reimbursed by Customer.

**4. Shipping Damage:** Customer must note shipping damage on the packing list and notify Sysmex Customer Service or Technical Assistance Center within three (3) business days of Product receipt to request damaged product replacement. In the event damage is noticeable from outer packaging, Customer must provide Sysmex with pictures of such damage.

**5. Accessorial and Other Charges:** Notwithstanding any provision hereof to the contrary, Customer shall be solely responsible for any costs incurred in connection with any deliveries of Products and Parts at the Customer’s unloading dock at the applicable destination, and in no event shall Sysmex be liable for any “lift gate” or other accessorial, premium, appointment or delivery services from the point of shipment.

**6. Duties, Taxes and Customs Charges:** Notwithstanding any provision hereof to the contrary, Customer shall be solely responsible for any taxes, duties, customs charges or other similar fees applicable to the delivery by Sysmex of any Equipment, Products, Service or Parts.

**7. Overnight Shipping:** All overnight shipments that are ordered the day before they are requested to arrive will include applicable freight charges and handling charges incurred by warehouse and freight carrier. Sysmex Customer Service in the USA and Canada must receive Quality Control Product orders by 1:00 pm CT, and reagent and consumable Product orders by 5:00pm CT - orders received after this time cannot be guaranteed to arrive the next day. Products which are hazardous materials may not be able to meet next day requirements due to Department of Transportation guidelines (49 CFR 175). Additionally, international shipments are subject to customs clearance outside of Sysmex’s immediate control which may cause delays.

**8. Returned Goods Policy:** Requests for returns must be submitted in writing or by telephone to Sysmex Customer Service and must reference the original invoice or packing slip. Sysmex will issue a Return Materials Authorization (“RMA”) number once the item in question is approved for return. Upon issuance of an RMA, Sysmex will provide instructions on how to return the Equipment or Product. For Equipment returns in which accessories or other components are included, the full shipment must be returned to Sysmex and any accessories shall be unopened. In the event that an incomplete Equipment return is received by Sysmex, the credit amount owed to Customer will be reduced by the value of the missing accessories or related Equipment components. All Equipment and Product returns must be processed and approved through Sysmex sales personnel. A restocking charge of up to twenty percent (20%) shall be assessed to Customer for any Product returns. For Equipment returns, Customer shall be responsible for the freight charges on the original shipment, as well as the return shipment, and any Equipment recertification or disposal fees. If applicable, any credits owed to Customer shall be processed within thirty (30) business days.

## Systemx Service Programs Exhibit – Urinalysis

**A. Service Levels.** Systemx performs certain Service levels for Equipment as further described below.

### 1. BeyondCare Service.

**(a) Coverage provided by Systemx at the BeyondCare Service Level includes:**

- (i) On-site Service Monday through Friday (excluding Systemx-recognized Holidays), 8:00 am to 5:00 pm (local Customer time).
- (ii) UF-5000, UD-10, Novus, UN-Systems, and AUWi PRO Equipment includes 24-hour, 365-day per year, technical telephone support, including remote software support via Systemx Network Communication System “SNCS™”, and other remote software by Systemx’s Technical Assistance Center (“TAC”).
- (iii) Contact by a Systemx Service Engineer (“SE”) within two (2) hours after TAC dispatches a service notice to the SE for services provided by Systemx.
- (iv) Service of PC hardware and IT hardware provided it is supplied by Systemx and is integral to the operation of the Equipment.

**(b) Services performed by Systemx at the BeyondCare Service Level include:**

- (i) **Managed Calibration Program for Equipment.** Managed calibration Services for Equipment is delivered per manufacturer recommendations during the term of the Service Warranty or any valid agreement for Service. For Equipment enabled with SNCS, including the UF-5000, and UF-1000 Equipment, calibration verification will be performed using SNCS™. UD-10 calibration will be performed only at installation and in the event Systemx determines installation of a major component or Part requires calibration. SNCS™ connectivity for the Equipment enabled with SNCS is required for remote calibration. SNCS™ enabled Equipment that is not connected using SNCS™ cannot be calibrated remotely, and will require Systemx to conduct on-site calibration. Any on-site Service provided for Equipment enabled with SNCS without connectivity to SNCS™, unless eligible for and subject to a valid agreement providing for on-site Service, will be invoiced and payable at the prevailing Service rate for time and materials.
- (ii) **Service Maintenance Program for UF-5000, UF-1000i, Novus, AUWi PRO and UN System Equipment.** Preventative maintenance is performed at every service visit using Systemx’s proprietary Evidence Based Maintenance program (“EBM™”), or as recommended or required by manufacture. EBM™ is a SNCS™-based service methodology driven by data to determine maintenance intervals and requirements. This may include SE visual inspections, Equipment cycle counts, time, access to historical databases, and part replacement history to determine required service activities.

**(c) Excluded Services.** BeyondCare Service Level Services exclude the following, which are Customer’s sole responsibility: consumable items or operator replacement items as detailed in the Equipment’s operator manual and any device used or associated with the Equipment which was not part of the Equipment as originally manufactured/supplied, e.g., external computers, updates and upgrades to third party operation systems, e.g., Microsoft and LIS operating systems and software.

### 2. BeyondCare Plus (Business Hours plus Emergency Weekend Service).

In addition to the provisions of BeyondCare Service described in Section A (1) above, BeyondCare Plus Customers will receive the following:

**(a) Services performed by Systemx at the BeyondCare Plus Service Level include:** On-site service Monday through Friday (excluding Systemx-recognized holidays), 8:00 am to 5:00 pm (local Customer time) and on-site emergency service, 8:00 am to 5:00 pm (local customer time) on weekends and Systemx-recognized holidays for “Qualifying Events” (which shall include Inoperable Equipment, as defined below, or an inoperable automation line). Qualifying Events exclude printers, barcode readers, RU reagent units, peripherals, and other ancillary devices. “Inoperable Equipment” shall be defined as the Equipment that in Systemx’s reasonable determination is unable to produce quantitative counts for RBC, WBC, EC, CAST, BACT (UF-5000 and UF-1000i Equipment) or unable to produce a result (UD-10 or Novus Equipment). A minimum of thirty (30) minutes of troubleshooting is required by a Systemx-trained laboratory technologist or Equipment operator in consultation with a Systemx TAC representative prior to a Systemx SE being dispatched.

**(b) Excluded Services.** Systemx may bill the Customer at prevailing after-hours rates for Services performed after business hours for events that are not considered a Qualifying Event, as determined by the Systemx SE, and verified by the District Service Manager.

## B. Product Specific Terms.

### 1. Urinalysis Equipment BeyondCare Service Guarantee.

**(a)** During the term of any valid agreement for Service, if two (2) or more of the same model of Urinalysis Equipment units (“Eligible Urinalysis Equipment”) are determined by Systemx to be Inoperable Equipment, Systemx will use commercially reasonable efforts to respond after-hours at Systemx’s then-prevailing normal business hour rate (or at no charge if under the Service Warranty or a valid agreement for Service); provided that each of the following qualifying conditions is met:

- (i) Customer is located in the contiguous United States (Alaska and Hawaii excluded).
- (ii) Customer has at least two (2) units of Urinalysis Equipment covered under the BeyondCare Service Term subject to this Agreement.
- (iii) Customer must have an identifiable, operating back-up solution that configures two or more Eligible Urinalysis Equipment units such that the lowest throughput alone has the capacity to meet Customer’s required turn-around-time.
- (iv) The Eligible Urinalysis Equipment must have an active SNCS™ connection. Any otherwise Eligible Urinalysis Equipment that does not have a fully operational SNCS™ connection will be ineligible. The U.S. Department of Defense is excluded from this requirement.
- (v) All Equipment operators in the laboratory must have successfully completed Systemx operator training, with a minimum requirement of being Systemx e-Training certified.
- (vi) All Customer maintenance specified to be performed by Customer in the operator’s manual for the Equipment must be current and performed as defined therein.
- (vii) At least thirty (30) minutes of troubleshooting by a Systemx trained operator with TAC is required prior to the dispatch of an SE.

“Inoperable Eligible Urinalysis Equipment” shall be defined as the Equipment in Systemx’s reasonable determination is unable to produce quantitative counts for RBC, WBC, EC, CAST, BACT (UF-5000 and UF-1000i Equipment) or unable to produce semi-quantitative results for bilirubin, blood, glucose, ketone, leukocytes, nitrite, pH, protein, color, urobilinogen, specific gravity (S.G.), clarity (Novus Equipment) and quantitative counts for RBC, WBC, EC, CAST, BACT (UF-5000 and UF-1000i Equipment).

**(b)** Service events caused by (i) Customer misuse or mishandling or any failure of Customer to operate or maintain the Eligible Urinalysis Equipment according to the operator’s manuals or Systemx’s or manufacturer’s recommended guidelines or procedures, (ii) energy or utility problems, such as power or utility failures, (iii)

building damage or weather-related damage, or (iv) any other external events outside the control of Sysmex or otherwise not caused by a defect that causes the Equipment to fail to perform in all material respects in accordance with manufacturer's specifications, are excluded from this Urinalysis Equipment Service Guarantee, and any related service by Sysmex with respect to any such service events shall be subject to Sysmex's then-prevailing after-hours service.

**2. Software Maintenance.** To ensure that Customer receives applicable software updates, maintenance and ongoing support, including rules change requests (only if applicable to the Equipment); an annual agreement for Service is required.

**C. Customer Obligations.** Customer commits to the following as a condition to receiving Services:

- 1. Remote Access for Service - Terms and Conditions for SNCS enabled Equipment.** Customer hereby acknowledges and agrees that Sysmex may (but shall not be required to) monitor performance and perform certain of its service and support obligations for the Equipment remotely through use of Sysmex's SNCS™ remote service software ("RSS"). In connection therewith, and as a condition to Sysmex performing its service and support obligations hereunder, Customer shall at all times during the term of this Agreement:
  - (a) Keep and maintain an adequate broadband internet connection operational so as to enable secure (https://) internet access from each unit of Equipment to Sysmex's service servers, on a 24-hour by seven-day basis.
  - (b) Allow Sysmex personnel to install the RSS on any unit of Equipment supplied by Sysmex.
  - (c) Keep and maintain the Equipment in accordance with the operator's manual therefor and install thereon Customer's antivirus software, on applicable systems, to detect and destroy malware such as viruses, Trojan horses, worms, spyware and to prevent any uninvited third party access to the Equipment via a network or other electronic means. Notwithstanding the foregoing, Customer's obligation to install such Customer's antivirus software does not apply to those Sysmex Equipment configurations, which disallow any files or executables not authorized by the manufacturer.
  - (d) Prevent any third party from accessing, using or servicing the RSS for any purpose; and
  - (e) Permit Sysmex personnel to de-install and remove the RSS upon termination of this Agreement or Sysmex's Service obligations hereunder.
- 2.** Customer agrees to (i) use the Equipment in strict accordance with the applicable operator's manual and training guide; (ii) permit Service exclusively by Sysmex certified personnel; and (iii) obtain the prior written consent of Sysmex before connecting the Equipment to any other equipment not sold or not distributed by Sysmex or any other equipment and/or accessories not supplied by Sysmex.
- 3.** Customer agrees to use the Equipment in a suitable location and with an electrical supply corresponding to the electrical supply specifications of the manufacturer as referenced in the operator's manual. Customer will protect the Equipment from all adverse elements, such as, without limitation, dirt, dust, humidity, liquids of any kind and fluctuations in voltage in excess of manufacturer's specifications for the Equipment.
- 4.** Customer will allow Sysmex personnel free access to operating locations of any Equipment to be serviced and provide adequate space around the Equipment. In turn, Sysmex agrees to abide by Customer's reasonable internal operating procedures that may be communicated by Customer from time to time.

**D. Exclusions from Service.** The Services provided to, and any payments made by, Customer under this Agreement shall not include the following:

- 1.** Repairs (and any replacement parts related to such repairs) which are directly or indirectly caused or necessitated by the acts, omissions, failures or negligence of the Customer or its employees, agents, contractors or invitees or anyone other than Sysmex or the Equipment manufacturer, force majeure events or any occurrence beyond the reasonable control of the manufacturer or Sysmex, including in particular, and without limiting the generality of the foregoing ("**Repairs**").
  - (a) Repairs required to remedy breakdown or damage resulting from operator errors, abnormal or unapproved uses, acts of third parties, faulty electrical connections, power surges, fluctuations or failures in air conditioning, heating or cooling systems, electrical power failures or the Customer's failure to satisfy any of its obligations arising under Section C, Customer Obligations.
  - (b) Repairs required to remedy breakdown or damage caused by defects or malfunctions of any external computer hardware or connections to the Equipment, including interfaces to LIS or other software, or connections to the Equipment.
  - (c) Repairs required to remedy problems due to improper completion of, or the lack of, normal operator maintenance as identified in the Equipment operator's manual.
  - (d) Moving Equipment or cosmetic services such as painting or repairing of dents/chips.
  - (e) Consumable items or operator replacement items as detailed in the Equipment operator manual and any device used or associated with the Equipment which was not part of the instrument as originally manufactured/supplied, e.g., external computers, and external power conditioners.
- 2.** In the event Sysmex is called upon to perform any of the excluded repairs stated in this Section D the following provisions shall apply:
  - (a) Sysmex shall prepare a proposal describing the work to be performed, including the following as may be applicable to the Equipment: the number and cost of supplies and parts to be provided, the expected time to completion, the prevailing hourly rate, as determined by Sysmex, and other details and conditions of the repairs.
  - (b) Customer shall sign Sysmex's proposal and provide Sysmex with a purchase order for the repair. Any terms and conditions of Customer's purchase order in conflict with the terms of Sysmex's proposal and/or this Agreement are hereby rejected and shall be deemed void and without effect and the terms of Sysmex's proposal and this Agreement shall govern. Upon acceptance of the signed Sysmex proposal and Customer's purchase order, Sysmex shall schedule the repair. Such repairs shall be billed separately from this Agreement.
- 3.** Uninterruptible Power Supply units supplied with the Equipment are covered by the applicable third party manufacturer's Limited Warranty, and Sysmex will not provide any Service for these items. However, Sysmex will cover the cost of the battery used in the originally supplied UPS as well as the UPS itself if found to be defective or no longer covered by the manufacturer's five (5) year warranty, as long as the Customer is under the Service Warranty or a valid agreement for Service.