



TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** January 25, 2018

RE: *Equipment Lease Agreement between Southern Nevada Health District and Bio-Rad Laboratories*

PETITION #02-18

That the Southern Nevada District Board of Health *approve the Equipment Lease Agreement C1800080 between the Southern Nevada Health District and Bio-Rad Laboratories for the lease of a BioPlex® 2200 System.*

PETITIONERS:

Karen F. Carifo, Ph.D., Laboratory Director *Kc 1-4-18*
Michael Johnson, Ph.D., Director of Community Health *MJ - 1-5-18*
Joseph P. Iser, MD, DrPH, MSc, Chief Health Officer *[Signature]*

DISCUSSION:

The new BioPlex® 2200 System will replace the Evolis, which has been in use at the SNPHL for the past 11 years. The Health District owns the Evolis, but the annual maintenance is expensive (\$16,400 annually). In addition, the BioPlex is a sequential analyzer. This new system will allow for the continual feeding of specimens into the instrument as they arrive no matter the combination of testing orders. This will increase efficiency and speed of report results. In addition, it allows for the expansion of testing services with newly available testing processes for HIV and Syphilis testing.

FUNDING:

A lease vs purchase analysis was performed. The purchase price of the BioPlex® 2200 System is \$265,000 plus \$27,900 maintenance per year (years two through five). The reagents are shipped to the Health District for use in the BioPlex, and we are only charged as they are used. Based on history through the Evolis, the SNPHL anticipates \$154,840 in cost for the reagents. The lease cost for this equipment is \$0 (which includes maintenance) as long as the SNPHL uses a minimum of \$154,840 in reagents per year. There is no other source for the reagents, so they would be purchased through Bio-Rad if the BioPlex was purchased or leased. The LIS Interface cost of \$10,000 will be paid by Bio-Rad.



**EQUIPMENT LEASE AGREEMENT
BETWEEN
SOUTHERN NEVADA HEALTH DISTRICT
AND
BIO-RAD LABORATORIES
C1800080**

THIS EQUIPMENT LEASE AGREEMENT (“Agreement”) is entered into by and between the Southern Nevada Health District (“Health District”) and Bio-Rad Laboratories (“Contractor”) (individually “Party,” collectively “Parties”).

WHEREAS, the Health District is the public health authority organized pursuant to Nevada Revised Statutes (“NRS”), Chapter 439, and has jurisdiction over all public health matters within Clark County, Nevada; and

WHEREAS, Health District desires to lease equipment which will perform Syphilis Total/RPR and HIV Ag-Ab testing (the “Required Testing”); and

WHEREAS, Contractor is a developer, manufacturer, and supplier of diagnostic products, and desires to lease to Health District a BioPlex[®] 2200 System which will perform the Required Testing; and

WHEREAS, Health District and Contractor desire to provide in writing a full statement of their respective rights and obligations in connection with their mutual agreement in furtherance of the above described purposes; and

NOW, THEREFORE in consideration of the mutual promises and undertakings herein specified, the Parties agree as follows:

1. **TERM AND TERMINATION.** This Agreement shall be effective from the Go-Live date (“Effective Date”) and ending 60 months thereafter (“Initial Term”).
 - 1.01 The Go-Live date is after the Equipment has been installed validated and tested, training of at least one Health District technician has been completed in accordance with paragraph 7.01(b) herein; but, no later than 60 days from installation of Equipment, and Equipment is deemed to be operational. The achievement of Go-Live will be signed off by Health District.
 - 1.02 Not less than sixty (60) calendar days prior to the end of the Initial Term and upon mutual agreement of the Parties, this Agreement may be renewed for one (1) additional twelve-month period on the same or similar terms and conditions (“Renewal Term”).
 - 1.03 This Agreement may be terminated by mutual consent of both Parties or unilaterally by either Party with or without cause by serving sixty (60) days written notice of termination upon the other Party at the address listed in Paragraph 28, Notices.

- 1.04 In the event Health District acquires title to the Equipment, this Agreement will terminate automatically on the date such title is acquired.
- 1.05 Contractor may immediately terminate this Agreement in the event Health District: (a) fails to make payment when due, as described in Attachment A, Payment, (b) materially breaches this Agreement (other than non-payment) and fails to cure such breach within thirty (30) days' written notice by Contractor of such breach, or (c) makes an assignment for the benefit of creditors or proceedings commenced by or for Health District under any bankruptcy, insolvency, or debtor's relief law. Contractor may also immediately terminate the License, as defined in Attachment B, Paragraph 5, End-User Software License, in the event Health District breaches the License.
- 1.06 This Agreement is subject to the availability of funding and shall be terminated immediately if for any reason State and/or Federal funding ability, or private grant funding ability, budgeted to satisfy this Agreement is withdrawn, limited, or impaired.
- 1.07 Upon termination of this Agreement, Contractor will be entitled to payment for orders and/or services provided prior to date of termination and for which Contractor has not been paid.

- 2. **COMPENSATION.** Health District agrees to pay Contractor the price per kit as indicated in Attachment A: Payment, during the Initial or Renewal Term of this Agreement.
- 3. **INCORPORATED DOCUMENTS.** The following attachments are hereby incorporated in this Agreement by reference with the same force and effect as if set forth herein:

ATTACHMENT A: PAYMENT
ATTACHMENT B: SUPPORT SERVICES

- 4. **SERVICES/STANDARD OF PERFORMANCE.** Consistent with Support Services more fully outlined in Attachment B, Contractor shall:
 - 4.01 Perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
 - 4.02 Assign only competent personnel to perform services pursuant to this Agreement.
 - 4.03 Perform the services in compliance with all applicable federal, state, and local laws, statutes, regulations, and industry standards.

- 5. **EQUIPMENT AND EQUIPMENT USE.** Upon full execution of this Agreement, Health District shall receive the following item(s) of equipment (collectively referred to as "Equipment"):

<u>Catalog #</u>	<u>Description</u>	<u>Quantity</u>
660-0000	BIOPLEX 2200 System	1
660-0213	HP Printer	1
660-0517	UPS Backup System	1

- 5.01 Upon Health District's acceptance of this Agreement, Contractor agrees to remove the below noted Evolis System currently onsite and owned by Health District and properly destroy, recondition, or separate parts into reusable components consistent with industry standards:

<u>Catalog #</u>	<u>Description</u>	<u>Quantity</u>
89700	EVOLIS (Serial #9163700478) including printer	1
42600206	UPS Backup System	1

- 6. **CERTIFICATION.** Health District certifies that prior to the execution of this Agreement, Contractor offered to sell reagent test kits to Health District, and/or to lease or sell the Equipment to Health District, separately, and that Health District has refused those offers, and has bound itself to the terms of this Agreement instead.

7. **RESPONSIBILITIES OF THE PARTIES.** During any term of this Agreement:

7.01 **Contractor's Responsibilities.** Contractor will:

- a. Cover all Equipment and Reagents shipping and/or transportation charges to (and where applicable, from) the place of business of Health District.
- b. Provide one-time training for each new BioPlex 2200, at no additional charge, for two of Health District's technologists at Contractor's Benicia, California facility. Airfare and associated fees such as baggage fees, transportation services upon arrival, lodging, and meals shall be arranged and paid for by Contractor according to its corporate travel policies.
 - i. Contractor facility training slots must be utilized within the latter of twelve (12) months of Go Live. Health District agrees to not report results for clinical use until at least one primary operator has attended formal in-house training.
 - ii. Except as otherwise provided herein, training at Health District site is available outside the terms of this Agreement on an as needed basis to be billed at the prevailing rate which currently is \$750.00 per 4 hours minimum block.
- c. Upon termination of this Agreement, for any reason except taking title to the Equipment, Contractor will provide a Service Engineer to pack and return the Equipment to Contractor.

7.02 **Health District's Responsibilities.** Health District will:

- a. Not remove any labels, symbols, or serial numbers that are or may be affixed to the items of Equipment being utilized hereunder, except as requested by Contractor in writing.
- b. Not modify or otherwise change Equipment.
- c. Use the same standard of care to protect the Equipment from loss and damage as it uses to protect its own equipment.
- d. Use the Equipment at Health District's Martin Luther King address, 700 Martin Luther King Boulevard, Las Vegas, NV 89106, only.

8. **TAXES.**

8.01 Where applicable, Health District will pay all taxes, federal, state, and local, which may be imposed upon the use, possession, ownership, or rental of the equipment and shall reimburse Contractor for any taxes paid for the Equipment. Health District is a tax-exempt organization (State of Nevada, Department of Taxation Account No. RCE-004-676) and shall promptly provide Contractor with a valid tax exemption certificate(s) for any and all taxes for which Health District is exempt. For the avoidance of doubt, Health District is not liable for any taxes imposed on Contractor.

8.02 Contractor is the owner of and retains title to the Equipment and is responsible for any applicable property taxes provided Health District forwards such property tax notification to: CDG Global Finance Department, Bio-Rad Laboratories, Inc., 4000 Alfred Nobel Drive, Hercules, CA 94547.

9. **STATUS OF PARTIES; INDEPENDENT CONTRACTOR.** The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement and in respect to performance of Services pursuant to this Agreement. In the performance of such Services, Contractor shall at all times be an independent contractor with respect to Health District. Contractor is not an employee or agent of Health District. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement will be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Parties.

10. **BREACH; REMEDIES.** Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing Party, the ability to seek reasonable attorneys' fees and costs.
11. **OWNERSHIP.** Except as provided in Attachment B, Support Services, Contractor shall retain ownership and title of Equipment during any term of this Agreement. Owner shall give Health District reasonable notice in the event Equipment is levied upon or is about to become liable or threatened with seizure, and Contractor shall indemnify Health District against all lost and damages caused by such action.
12. **WAIVER.**
 - 12.01 Health District agrees that this Agreement is an agreement of use with respect to the Equipment. Health District: i) does not in any way acquire title to or ownership of the Equipment or any item thereof except under Attachment B; ii) agrees that upon termination or cancellation of this Agreement for whatever reason, it shall immediately return the Equipment or permit its removal pursuant to paragraph 7.01(c); iii) agrees its sole right hereunder is to peaceably possess and use the Equipment consistent with the terms of this Agreement.
 - 12.02 In the event Health District fails to make payment required hereunder when such payment becomes due, Contractor may, in its discretion and without further liability, terminate this Agreement; and with Health District's consent, enter upon Health District's facility and remove the Equipment. Health District waives prior notice, pre-seizure hearing and judicial process as prior conditions to repossession of the Equipment or any item thereof. Health District is required to pay all expenses incurred in connection with the enforcement of any remedies, including all expenses of repossessing, storage, shipping, repairing, recertification, selling the Equipment and reasonable attorney fees (Note: expenses not to exceed 30% of the total Agreement value).
13. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
14. **LIMITED LIABILITY.** Health District will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626. Agreement liability of both Parties shall not be subject to punitive damages.
15. **LIMITATION OF LIABILITY.** To the maximum extent permitted by applicable law, in no event shall contractor be liable for any special, indirect, incidental or consequential damages, including, without limitation, loss of business, loss or inaccuracy of data, lost revenues or profits or injury to third persons, whether foreseeable or not, regardless of whether contractor has been advised of the possibility of such damage.
16. **LIMITED WARRANTY.**
 - 16.01 Contractor warrants and represents that the Equipment will perform in accordance with Contractor's standard warranty. The warranty period begins on Health District's Effective Date and remains in effect for one year.
 - 16.02 Except for the express warranty stated in this paragraph, contractor makes no warranties, express or implied, with respect to any of the equipment or the software, including any warranties of merchantability or fitness for a purpose or noninfringement.

17. **CONFIDENTIALITY/PUBLIC RECORDS.** As a public entity, Health District is, as a matter of law, subject to Nevada Revised Statutes Chapter 239. Accordingly, Health District will have a duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Accordingly, documents, including this Agreement, may be open to public inspection and copying; provided however that Contractor shall have the right to timely object or dispute the production of any such documents, agreements, or other materials in the appropriate court, and in the event of such objection Health District shall not produce any such documents, agreements, or other materials until a determination is made by a court of competent jurisdiction or order of a governmental agency or legislative body under any written law, regulation, or legal order. For the avoidance of doubt, Contractor's software, user manuals, and supporting documentation are highly confidential and are not to be disclosed to any third parties absent an order from a court of competent jurisdiction. Any Confidential Information disclosed pursuant to this Section will remain confidential against all other parties.
18. **FORCE MAJEURE.** Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, interruption of transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.
19. **INDEMNIFICATION.** Neither Party waives any right or defense to indemnification that may exist in law or equity.
20. **NON-DISCRIMINATION.** As an Equal Opportunity Employer, Contractor has an ongoing commitment to hire, develop, recruit and assign the best and most qualified individuals possible. Contractor employs employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, gender, status as a disabled veteran, or veteran of the Vietnam era, disability or sexual orientation. Contractor likewise agrees that it will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, rules enforced by the Nevada Equal Rights Commission, and the American with Disabilities Act, in connection with this Agreement.
21. **SEVERABILITY.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
22. **ASSIGNMENT.** Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.
23. **PROPER AUTHORITY.** The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth in the documents incorporated herein.
24. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the Parties and supersedes any prior contracts or agreement between the Parties regarding the subject matter hereof. This Agreement and the terms and conditions of any invoice issued by Contractor hereunder shall entirely supersede any terms or conditions which may be in Health District's purchase or order form or its agent's invoice. Any terms or conditions contained in any such form or invoice of Health District shall be null and void, except for those specific terms concerning quantity, billing directions, and shipping instructions, and any additional terms specifically accepted by Supplier.

25. AMENDMENTS. This Agreement may be amended only by a writing signed by a duly authorized agent/officer of each Party and effective as of the date stipulated therein.
26. GOVERNING LAW. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to the laws of the State of Nevada, notwithstanding conflict of laws principles, with Clark County, Nevada as the exclusive venue of any action or proceeding related to or arising out of this Agreement.
27. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.
28. NOTICES: All notices permitted or required under this Agreement shall be made by personal delivery, overnight delivery, or via U.S. certified mail, postage prepaid to the other Party at their address(es) set out below:

Southern Nevada Health District
 Attn: Financial Services Department
 280 S. Decatur Blvd.
 Las Vegas, NV 89107

Bio-Rad Laboratories, Inc.
 Attn: Contract Administration
 6565 185th Avenue NE
 Redmond, WA 98052


With a copy to:
 Bio-Rad Laboratories, Inc.
 Attn: General Counsel
 1000 Alfred Nobel Drive
 Hercules, CA 94547

BY SIGNING BELOW, the Parties agree that they have read, understand, and agree to the conditions set forth above and have caused their duly authorized representatives to execute this Agreement.

SOUTHERN NEVADA HEALTH DISTRICT

BIO-RAD LABORATORIES, INC.


By: _____
 Andrew J. Glass, FACHE, MS
 Director of Administration

By: 
 Janette J. Stockert
 Contract Administration Supervisor
 Government Contracts/paralegal

Date: _____

Date: December 20, 2017

Approved as to form:


 Annette L. Bradley, Esq.
 General Counsel

**ATTACHMENT A
PAYMENT**

1. In consideration of the lease of the BioPlex® 2200 System, Health District agrees to pay Contractor as follows:

1.01 RENTAL CHARGES:

- a) During any term of this Agreement, Contractor will bill Health District per reportable test based on the BioPlex® 2200 System "Use Tracking Report." Contractor will bill Health District monthly. Health District will fax, monthly, to Contractor the BioPlex® 2200 System "Use tracking Report" to FAX # 1-510-741-5836, Attention: Contractor Administration by the 5th of each month. Contractor will then bill Health District for the month. Health District will be billed at the rates indicated below, which are based on the assumed minimum reportable per quarter indicated below. Health District is required to submit its first "Use Tracking Report" within thirty days from date of Health District's Acceptance. Thirty days after Health District's Acceptance date, the first quarter time frame will begin and Contractor will track compliance to minimum reportable quantities noted below. Cost per Billable ("CPB") test will cover rental of the Equipment, Contractor Silver Signature Service, and reagent costs.

Catalog #	Description	Minimum Reportables per Quarter	Price/CPR
19000072	Syphilis Total	5,000	\$3.98
19000073	RPR	450	\$3.98
665-345C	HIV Ag-Ab-Screen	3,750	\$5.20

- b) Contractor agrees to hold firm quoted prices for the first year. After the first year, the price will increase each year thereafter by 3% per year for four years. Pricing will be reviewed annually. If the review shows that the total spend increased by 10% or more, then pricing can be renegotiated.
- c) The following items are included with this Agreement at No Charge with the freight to be paid by Contractor:

Catalog #	Description
12000650	Syphilis Total & RPR Panel
665-3455	HIV Ab-Ag Reagent pack

- d) Health District may order as needed the following bulk consumables. These items will be invoiced at the time of delivery with the freight to be paid by Contractor. (Note: An estimated annual usage volume is included):

Catalog #	Description	Estimated Annual Usage	Price
660-2003	Reaction Vessel (1000)	34	No Charge
660-0820	Bio-Hazard Waste Bag (14x19)	38	No Charge
660-0817	Instrument Sheath Fluid (Box of 2)	17	No Charge
660-0818	Instrument Wash Buffer	33	No Charge
660-0001	Instrument Detector Calibration Pack	7	No Charge
660-0002	Instrument Detector Clean Pack	7	No Charge
660-0003	Instrument Probe Cleaning Solution	7	No Charge
660-0578	Sodium Hydroxide, 1.0 N (1 Liter)	1	No Charge
12000651	Syphilis Total & RPR Calibrator Set	7	No Charge
12000653	Syphilis Total & RPR Control Set	7	No Charge
663-3405	HIV ag-ab Calibrator Set (1x6 vials)	4	No Charge
663-3435	HIV Ag-A Control Set (1 x 4 vials)	2	No Charge

- e) Contractor, at its sole discretion, may choose to 1) sell, or offer at no-charge, specimen panels to Health District for the purpose of assisting Health District in the evaluation of new assays or 2) may refer Health District to a third-party vendor for Health District to make its own arrangements to purchase the specimen panels for the evaluation of new assays.
- f) The LIS Interface costs of up to \$10,000 will be paid by Contractor directly to Health District. Health District will provide Contractor with a copy of the quote from the LIS interface vendor along with Health District's proof of payment to LIS Interface vendor (i.e., cancelled check or comparable evidence of payment). Contractor will issue a Purchase Order and payment to Health District following receipt of Health District's proof of payment to the LIS Interface vendor. If Health District cancels this Agreement before the expiration of the Initial Term, Health District will reimburse Contractor a pro-rata share of the LIS Interface costs.
- 1.02 Payment will be made within 30 days after receipt of invoice for orders received or services provided.
- 1.03 In the event items billed are disputed, payment for those items will be held until the dispute is resolved.
- 1.04 Health District will not be liable for interest on late payments.

**ATTACHMENT B
SUPPORT SERVICES**

1. CARE AND SERVICING OF THE EQUIPMENT

- 1.01 At no additional cost to Health District, Contractor will provide telephone assistance 24 hours per day, 365 days per year.
- 1.02 As part of this Agreement, Contractor or Contractor appointed personnel will provide on-site services, as needed, to keep the Equipment in good working order. On-site service will be provided, at no cost to Health District, Monday through Friday, 8:00 a.m. to 6:00 p.m. (local time), excluding national holidays. On-site extended service coverage (Saturday, Sunday, and/or holidays) is available, but is not included in this Agreement. Contractor's Signature Service Agreement Rate Schedule for "Extended Reagent Rental Service Coverage" charges are available upon request.
- 1.03 Contractor will not be required to pay the cost of any damage to the Equipment caused by Health District's negligence, abuse, or alteration of the Equipment, or by any service performed by unauthorized personnel or by use of any service performed by unauthorized personnel or by use of any non-Contractor approved reagents, calibrators or disposables.
- 1.04 Health District agrees that only Contractor appointed personnel are to service the Equipment.
- 1.05 Health District agrees to utilize only Contractor approved reagents, calibrators, and disposables on the Equipment. Contractor shall not be responsible for the moving (de-installation and re-installation) of Equipment from one location to another, additional operator training, and/or any other extra services not specified in this Agreement.
- 1.06 Health District agrees to provide Contractor with an internet connection to each instrument to facilitate remote troubleshooting, problem diagnosis, and possible resolution without dispatch of a Supplier Engineer.
- 1.07 Contractor shall not be responsible for the moving (de-installation and re-installation) of Equipment from one location to another, additional operator training, and/or any other extra services not specified in this Agreement.

2. CONFIDENTIALITY / CONTRACTOR'S USE OF CONFIDENTIAL INFORMATION.

- 2.01 No protected health information as that term is defined in the health Insurance Portability and Accountability Act of 1996, as amended, will be shared with Contractor during the course of this Agreement and Health District is solely responsible for safeguarding any PHI that may be accessible to Bio-Rad.
- 2.02 Bio-Rad is not a Business Associate of Health District. Consistent with state and federal privacy laws, Contractor will at all times have in place procedures to ensure the privacy and maintain the confidentiality of any personal, confidential, or otherwise sensitive information received. Contractor shall exercise at least the same degree of care as it uses with its own personal, confidential, or otherwise sensitive Information, but in no event less than reasonable care.

3. RISK OF LOSS & DAMAGE OF EQUIPMENT

- 3.01 Health District will be responsible for any damage to Equipment not caused by Contractor's services or products. Health District shall promptly notify Contractor of any damage to Equipment described herein.
- 3.02 If Health District is liable for damage and if Contractor, in its sole discretion, decides the damaged items are not repairable, Health District shall pay Contractor the current catalog trade

price for the item of the Equipment less depreciation based on a ten (10) year straight line base (prorated monthly). Thereupon, Health District will own that item "as is" with all faults and defects.

- 3.3 Health District will agree to insure said piece of Equipment against "All Risks" of physical damage or loss and forward to Contractor a Certificate of Insurance naming Contractor as Loss Payee, if requested.

4. TITLE TO EQUIPMENT.

- 4.01 Except as otherwise provided herein, Contractor is the owner of and retains title to the Equipment.
- 4.02 Health District shall not permit or suffer any attachment, encumbrance, lien, or security interest to be filed against Equipment and shall promptly notify contractor if any of the foregoing is filed or claimed and shall indemnify Contractor for any loss or damage resulting from any of the foregoing.
- 4.03 Contractor may file a precautionary UCC-1 financing statement and upon Contractor's request, Health District will execute a financing statement as provided under the Uniform Commercial Code to permit Contractor to perfect a security interest in Equipment.

5. END-USER SOFTWARE LICENSE.

- 5.01 LICENSE: Contractor hereby grants Health District a non-exclusive, non-transferable license to use all software now or hereafter installed by Contractor on the BioPlex 2200 System as delivered, including updates and new releases (the "Software") in object code only for Health District's own internal purposes, as provided for under the terms of this Agreement.
- 5.02 TITLE: Health District agrees that the Software, including all enhancements, improvements, copies thereof, and all intellectual property contained therein, is proprietary to Contractor, and the furnishing thereof does not constitute the grant or waiver of its proprietary interest or rights therein. Contractor reserves all rights not expressly granted herein.
- 5.03 LIMITATIONS ON USE: Health District shall not: (1) sell, license, lease, lend, loan or otherwise transfer possession of the Software or any of the physical media containing the Software to any person or entity; or (2) permit the Software to be accessed remotely, via modem or via other means, unless expressly approved in writing by Contractor, which approval will not be unreasonably withheld; or (3) copy, reformat, rearrange, excerpt or modify, disassemble, decompile, or otherwise reverse engineer all or any part of the Software for any purpose; or (4) download into, copy onto or use the Software on more than one personal computer or access device at any given time.
- 5.04 TERMINATION OF LICENSE: This Agreement and the license granted herein shall continue until terminated as described in this subparagraph. If Health District breaches the License, Contractor shall have the right to terminate this License immediately in which case Health District shall immediately return the Software and any derivative works and shall destroy all copies of the Software and any derivative works which Health District still has in its possession. Health District shall be responsible for any damages caused to Contractor which may result from Health District breach of the License, and its damages in enforcement of the License. The remedies specified herein are cumulative, and are in addition to any other remedies which Contractor may have at law.