

Terms & Conditions – Product

These terms and conditions (the “Terms”) govern all transactions involving Products between the Parties. Unless agreed to otherwise by the Parties, the Terms take priority over any conflicting terms in another document. By placing an order related to a Sales Quote, Buyer agrees to these Terms. All additional or different terms proposed by Buyer are rejected, and null and void.

1. CERTAIN DEFINITIONS

- (a) “Panels” mean an FDA-cleared comprehensive test targeting an infectious disease syndrome focusing on a broad group of pathogens, currently including the FilmArray® Respiratory, Blood Culture Identification, Gastrointestinal, and Meningitis Panels.
- (b) “Buyer” refers to the entity or person(s) listed on the Sales Quote.
- (c) “Devices” mean a FilmArray® Instrument (1.5, 2.0, and Torch) and related peripherals.
- (d) “Permitted Uses” means the field of use and/or application of the Products (or specific Products or classes of Products) by end-users, as specified on Product labels and Instructions for Use.
- (e) “Products” mean Panels, Devices, Software, or other items covered by the Sales Quote and Buyer's purchase order.
- (f) “Seller” means BioFire Diagnostics, LLC.
- (g) “Software” means computer software, machine readable instructions or instruction sets owned or licensed by Seller and delivered with or installed, loaded, integrated, embedded, bundled, incorporated or read into memory on any Devices.
- (h) “Third Party Licenses” mean rights or licenses of Buyer under contractual agreements between Buyer and one or more third parties.

2. ORDERS

By placing an order, Buyer agrees to these Terms. Seller reserves the right to reject any purchase order for any reason, including but not limited to Buyer's credit history, product availability, etc. Seller's acceptance is established by (a) Seller delivering written acknowledgement of acceptance to Buyer, or (b) Seller delivering Products to Buyer, whichever occurs first. However, any order placed for Panels will, subject to Section 12 ("Limited Warranty"), be non-cancellable and non-refundable.

3. SHIPPING AND INSURANCE

Unless Buyer requests that Products be shipped under its own account, Seller will deliver the Products to a common carrier for shipping, based upon Seller's packaging, shipping and insurance practices, to the address designated by Buyer (“Delivery Point”). Seller ships all Products FOB Origin for delivery in the United States and FCA Origin (INCOTERMS 2012) for delivery outside of the United States. Buyer will bear all freight, insurance and other shipping costs to Delivery Point. Seller may ship in one or more lots, in which case each lot will be deemed a separate sale. Seller will not be liable for any failure or delay in shipping. Seller will have the right, in its judgment, to apportion Products among its customers in such manner as Seller deems equitable.

4. RISK OF LOSS

Risk of loss or damage passes to Buyer when Products are delivered to a carrier, at which point, Buyer is responsible for all loss or damage to the Products. No loss or damage will relieve Buyer from its payment obligations under this Agreement. Seller's warranty coverage also begins when Products are delivered to a carrier. In the event of loss or damage during shipping, Buyer may make a warranty claim to Seller. After a warranty claim for loss or damage during shipping, any proceeds from insurance on the Products will be paid to Seller.

5. ACCEPTANCE OF PRODUCTS

Devices may be returned for full credit within 5 calendar days of delivery, provided that Buyer has not damaged the Devices. Panels may not be returned except in the event that Buyer has a warranty claim. Devices will be deemed accepted upon Buyer's written acceptance, or if not rejected in writing received by Seller within 5 days of delivery. To make a claim for defective, damaged or missing Products, Buyer must notify Seller in writing within the noted time period, and if applicable, return Products to Seller using a valid return authorization number (RMA). Seller may refuse any Product not timely rejected or returned without a valid RMA. For any valid claim made, Seller may elect to repair or to replace the Product with a comparable Product or to refund the purchase price of the Product. These are Buyer's sole and exclusive remedies for defective, damaged or missing Product(s).

6. PERMITTED USES

The permitted uses for the Products are set forth in their Instructions for Use, and the licenses provided with the Products are for the Permitted Uses. Buyer agrees to comply with all applicable laws and regulations when using the Products. Buyer will store Panels in accordance with Seller's storage and handling instructions (or, absent such instructions, in accordance with industry customs and standards), including all temperature and climate control standards. Buyer will store Panels in accordance with Seller's storage and handling instructions (or, absent such instructions, in accordance with industry customs and standards), including all temperature and climate control standards.

7. PURCHASE PRICE

Buyer will pay for Products no later than thirty (30) days after the date of Seller's invoice which will include all applicable taxes, shipping and insurance costs to the extent of Buyer's responsibility for such costs under Section 3. If Buyer is tax-exempt, Buyer will provide Seller with certification of its status. Payments are deemed made by Buyer when received by Seller. Interest will accrue on any unpaid balances due to Seller at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after the due date. New customers are subject to credit approval. Seller accepts Visa, MasterCard and American Express. Seller reserves the right to require other payment terms, including without limitation, payment in advance and/or letters of credit. All foreign shipments require prepayment prior to shipping, unless otherwise specified by Seller. Buyer is not entitled to abate or reduce payments, or to offset any amounts or charges against the amounts due to Seller under this Agreement.

8. SOFTWARE

All Software, other than Software owned, developed, controlled or licensed by a party other than Seller ("Third Party Software"), provided to Buyer will be licensed subject to the terms set forth in any "shrink-wrapped" license packed with the Products or "click-wrapped" license visually displayed upon installation or execution of the Software (the "End-User License Agreement"). In the absence of any such End-User License Agreement for a particular Software Product, Seller grants upon delivery to Buyer, a non-exclusive license to use the Software (other than Third Party Software) solely in conjunction with the Products, subject to the following terms and conditions: (a) all title to, ownership of and all proprietary rights (including but not limited to patent rights, copy- rights, trade secrets and other intellectual property rights) in and to the Software, other than the limited rights expressly granted to Buyer herein, remain vested in Seller; (b) Buyer will not sell, transfer, assign, lease, loan, rent, sublicense, reproduce, duplicate or distribute the Software or any rights under the Software license granted; (c) nothing contained in this Agreement will obligate Seller to deliver Software source code to Buyer or any third party; (d) Buyer will not, and will not permit others to: copy, translate, modify, create derivative works from, reverse engineer, decompile, encumber or otherwise use the Software; and (e) all appropriate copyright and other proprietary notices and legends will be retained on all Software. With respect to Third Party Software, Buyer's license and rights to use such Third Party Software will be subject to the terms and conditions of use specified by the owner, developer or manufacturer.

9. INDEMNIFICATION

Buyer will indemnify, defend and hold Seller harmless from and against any claim, demands, causes of action or liability asserted by any third party and arising from or related to (a) the use, possession or operation of the Products inconsistent with their Instructions for Use, (b) the conduct by Buyer of its business and operations, or (c) any breach of any covenant or any representation or warranty made by Buyer in this Agreement. Seller will indemnify, defend and hold harmless Buyer harmless from and against any claims, demands, causes of action or liability asserted by any third party and arising from or related to (a) the design or manufacture of the Products, (b) the alleged infringement of any proprietary right related to the design of the Products, or (c) any breach of any covenant or any representation or warranty made by Seller in this Agreement.

10. LIMITATION OF LIABILITY

Under no circumstance will Seller have any liability to Buyer, Buyer's officers, directors, owners, agents, employees, Buyers or any third parties for any incidental, indirect, special or consequential damages arising out of or related to (a) the use, possession or operation of the Products, or (b) the conduct by Buyer of its business and operations, or for any damages based on strict or absolute tort liability, negligence or other theory of liability (except to the extent of contract liability to Buyer arising from a Seller default, if any, under this Agreement), regardless of whether Seller is advised or has knowledge of the possibility of such damages. Notwithstanding anything to the contrary in this Agreement, Seller's liability under this Agreement, if any, to Buyer or its employees, agents, Buyers or invitees, or any third party(ies), is expressly limited to the purchase price paid by Buyer in connection with the specific Product(s) which are the proximate cause of any such liability.

11. EXPORT CONTROLS

Buyer and Seller will comply with, and Seller's duty to export, ship or deliver Products to Buyer is subject to, applicable laws and regulations including, without limitation, the Export Administration Act of 1979, the Export Administration Regulations issued by the United States Department of Commerce, and the International Traffic in Arms Regulations (ITAR) issued by the United States Department of State.

12. LIMITED WARRANTY

Other than as set forth in Seller's Standard Limited Warranty and Extended Warranty (if purchased by Buyer), Seller makes no other or further representations or warranties of any kind or nature whatsoever.

Seller's sole obligation (and Buyer's sole remedy) under Seller's warranties will be for Seller to repair or replace the Products. With respect to all warranty claims, Buyer will contact Seller's customer support team for technical and troubleshooting assistance and if Seller is unable to resolve the problem and Seller concludes that it is a warranty claim, Seller will issue a RMA. Seller's standard limited warranty becomes effective when Products are tendered to a carrier for shipping.

SELLER MAKES NO FURTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCT'S FITNESS FOR A PARTICULAR PURPOSE, LACK OF INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES OR THE COMPATIBILITY OR INTEROPERABILITY OF THE DEVICES OR SOFTWARE WITH OTHER PERSONAL PROPERTY OR ACCESSORIES (OTHER THAN DEVICES SOLD OR FURNISHED HEREUNDER) WHICH BUYER USES WITH OR CONNECTS TO THE DEVICES OR SOFTWARE.

13. CERTAIN LICENSING AND PATENT MATTERS

Many of Seller's Products are covered by U.S. patents, patents pending, or their foreign counterparts, owned or licensed by BioFire Diagnostics, LLC which may be viewed at www.biofiredx.com. Products purchased and sold hereunder are sold by Seller solely for Permitted Uses by Buyer, subject to any restrictions on Permitted Uses. Depending on Buyer's specific application(s), Buyer may need one or more additional licenses or rights to use certain of the Products. Buyer

represents and warrants that it has, or will obtain, all necessary Third Party Licenses for its specific application(s), and Seller disclaims any liability or responsibility to Buyer with respect to patents or other proprietary rights owned or controlled by third parties. Notwithstanding anything to the contrary in this Agreement, nothing contained herein will be deemed, construed or interpreted as (i) a grant, transfer or convey to Buyer or any third party, expressly or by inference, of any right, title or interest in, or license or right to use, any, all or any portions of Seller's inventions, patents, know-how, processes or procedures, technology, know-how, copyrights or trademarks, other than the right to use the Products for Permitted Use(s) only; (ii) granting Buyer any ongoing right to be supplied with, or to manufacture or to have manufactured, any quantities of Products beyond those ordered in accordance with the terms and conditions of this Agreement; or (iii) granting Buyer the right to resell or convey in any manner the Assays or any components thereof to any third party anywhere in the world.

14. COMPLIANCE

It is not the purpose of this Agreement to induce or encourage the referral of patients or the payment, directly or indirectly, of any remuneration by one party to the other party in violation of applicable laws, rules, or regulations. Each party agrees that no part of the remuneration provided to the other party is a payment or inducement for, and is not in any way contingent upon, the admission or referral of any patient. Seller agrees that any discounts to Seller's charges for the services and/or items provided to Buyer pursuant to this Agreement will be made and identified to Buyer in writing at the time of the sale. Buyer hereby acknowledges that it may have an obligation to report such discounts and provide, upon request by federal or state governmental payer programs, information documenting the discount received from Seller. Seller will provide Buyer with all information regarding any discount as requested by Buyer for Buyer to respond to requests by federal or state governmental payer programs. However, Buyer will be solely responsible for reporting applicable discounts on its Medicaid/Medicare cost reports.

15. MISCELLANEOUS PROVISIONS

Unless otherwise agreed to by the Parties in writing, this Agreement sets forth all of the terms governing the purchase of Products by Buyer from Seller. This agreement is binding upon the Parties. This contract may only be modified in writing signed by the Parties. If any provision of this contract is declared unenforceable, the other provisions herein will remain in full force and effect. This contract will be interpreted according to the laws of the State of Utah without application of conflict of laws principles. The United Nations Convention on the International Sales of Goods will not apply to the transactions contemplated by this Agreement. For any dispute related to this Agreement, venue will be proper before any court of competent jurisdiction. The Parties agree to waive all rights to recover punitive or exemplary damages, right to trial by jury, and any objection to jurisdiction based upon forum *non conveniens* or a similar theory.

Standard Limited Warranty

Before returning any Product, please consult the instructions below and contact BioFire Diagnostics, LLC ("BFDX") Technical Support at either: (800) 735-6544, (801) 736-6354, or support@biofiredx.com. CUSTOMER AGREES TO ALL TERMS, CONDITIONS AND OBLIGATIONS CONTAINED IN THIS STANDARD LIMITED WARRANTY.

- 1. DEFINITIONS.** "Pouch" means the clinical diagnostic thermal cycling oligonucleotide assays or primers, probes or reagents manufactured by BFDX. "Instrument(s)" means FilmArray® 1.5, FilmArray® 2.0, FilmArray® Torch devices which are manufactured and/or distributed by BFDX or through a third-party approved by BFDX. "Software" means software developed and distributed by BFDX. "Third-party Software" means software developed, sold, or licensed by a party other than BFDX. "Third-party Products" mean any Pouch, Instrument or ancillary product used with the Instruments that is manufactured by a party other than BFDX. "Product" means a Pouch, Instrument or parts or components thereof, and/or Software manufactured by BFDX. "Specifications" means the criteria established by BFDX in a user manual to measure, evaluate, or assess the operation or performance of the applicable Product subject to any updates or modifications by BFDX after receipt of the Product by Customer.
- 2. WARRANTY TERM.** This Limited Warranty begins when BFDX gives Products to a carrier/shipper for delivery to Customer. The warranty is effective from that date for a period of twelve (12) months. Customer may purchase an extended warranty from BFDX to cover Products beyond this initial twelve (12) month period. Instrument repairs and replacements are covered by this Standard Limited Warranty for (i) ninety (90) days after the date of repair or replacement or (ii) the remainder of the original warranty period, whichever is longer.
- 3. WARRANTY COVERAGE.** Subject to the terms and conditions herein, BFDX warrants that:
 - (i) Instruments will be materially free from defects in material and workmanship, and will perform substantially in accordance with the Specifications in BFDX's user manual;
 - (ii) Properly installed and executed software will operate substantially in accord with the Specifications when used with an Instrument sold by BFDX or by a third-party approved by BFDX;
 - (iii) Pouches will be materially free from defects in material and workmanship, and when properly stored and maintained by Customer in compliance with the user manual will be usable for at least the period of time stated on its label.
 - (iv) The original end-user customer ("You" "Your" or "Customer") is the person with rights under this Limited Warranty. The Customer's rights and obligations under this Limited Warranty will bind and inure to the benefit of Customer's respective successors, heirs, executors and administrators and permitted assigns.
- 4. WARRANTY EXCLUSIONS.** This Limited Warranty excludes: (i) repairs or other services which are necessary because of any use that does not conform to the user manual; (ii) normal wear and tear other than an operational or mechanical breakdown; (iii) decontamination of an Instrument; (iv) theft or other loss; (v) damage that does not affect functionality; (vi) problems arising from or related to misuse, alteration, neglect, accident, or reckless, abusive, willful or intentional conduct; (vii) problems arising from or related to external electrical power sources; (viii) improper maintenance, repair, or disassembly (including partial disassembly) by anyone other than BFDX or its authorized representatives or using parts, accessories or supplies not provided by BFDX; (ix) problems arising from or related to Software on any device other than the device sold by BFDX or through a third-party approved by BFDX; (x) instruments, devices, consumables, or accessories manufactured by any party other than BFDX, including assays, centrifuges, computers, monitors, printers or other peripheral accessories or devices, and Third-party software, including the device operating system or applications software (other than Software); and (xi) any cost incurred for additional equipment, parts, or accessories related to a Software upgrade or new version of the Software.
- 5. BENEFITS OF THIS LIMITED WARRANTY.** This Limited Warranty provides the following benefits to Customer:
 - Loss or Damage During Shipping:** In the event that Products are lost or damaged during shipping by a carrier, BFDX will replace the Products upon notice from the Customer initiating a claim as provided by Section 7 below;
 - Instrument Repairs:** BFDX will furnish labor, parts and/or replacement equipment necessary to repair operational or mechanical breakdowns of an Instrument as provided by Section 3 above;
 - Software Upgrades:** BFDX will provide new versions, releases or upgrades of the Software as provided by Section 3 above, provided that BFDX may require Customer install and use a Software upgrade as a condition precedent to continued services under this Limited Warranty;
 - Optional Instrument Recalibration and Quality Inspection:** No more than one (1) time during the period of this Limited Warranty, Customer may return an Instrument for recalibration, maintenance and quality inspection;
 - Telephone Support:** BFDX currently offers twenty-four-hour telephone customer support by calling BFDX's Customer Support Department subject to the terms, conditions and limitations of this Limited Warranty.
- 6. ASSIGNMENT OF THIRD PARTY WARRANTIES.** While BFDX extends no warranty and has no liability or obligation with respect to Third Party Items, BFDX assigns (to the extent permitted to do so) any applicable third party manufacturer warranties to Customer.
- 7. INITIATING WARRANTY CLAIMS AND SERVICE.** In order to obtain warranty service, contact Customer Support to evaluate the claim as directed above. Customer Support may ask Customer to report the issue in writing. BFDX may attempt to resolve the problem over the telephone. If your problem

cannot be resolved over the telephone, BFDX will determine (in its sole discretion) the most practicable resolution, which may include one or more of the following: (i) shipment of new or reconditioned replacement parts on an exchange basis together with instructions for Customer to perform installation, (ii) shipment of a new or reconditioned replacement Instrument that is at least functionally equivalent to the original Instrument on an exchange basis, (iii) shipment of a new, in-service or reconditioned Instrument that is at least functionally equivalent to the original Instrument on a temporary "loan" basis, (iv) assistance from BFDX's Field Support Specialists, or authorized distributors at Customer's location, or (v) issuance of a return material authorization (RMA) for Customer to return the Product for repair or replacement by BFDX. If BFDX elects to ship a replacement Product to Customer, the original Product becomes BFDX property upon Customer's receipt of the replacement. Customer must return the original Product to BFDX within twenty (20) days after Customer's receipt of the replacement Product, or pay BFDX the retail value of the replacement Product.

- 8. CUSTOMER REQUIREMENTS TO RETURN FOR SERVICE.** If BFDX elects to repair a defective Product in its facility, the defective Product must be received by BFDX no later than thirty (30) days after the date BFDX issued the RMA. Prior to shipping the defective Product to BFDX, Customer must follow the return instructions specified by BFDX including, without limitation, decontamination, data backup procedures, other procedures specified by BFDX, and all shipping instructions. Failure to follow all instructions may result in delay of return of the Product. Customer is solely responsible for shipment of the Product to BFDX free of any biological, chemical or organic materials, agents or toxins and otherwise in accordance with all applicable laws, rules and regulations, and BFDX reserves the right to refuse delivery or return the product without service if Customer does not strictly comply with this requirement. Further, Customer is solely responsible for backing up any data to enable Customer to reconstruct or recover lost or altered data and for removing any confidential, proprietary or personal information. BFDX disclaims responsibility for any lost, damaged or destroyed software program, data or other information stored on any data storage media or any part of any Product covered by this Limited Warranty, and BFDX disclaims responsibility for deletion or alteration of the contents of any hard drive or data storage media which may occur during service of a Product. BFDX is not responsible for the restoration or reinstallation of any programs or data other than software installed by BFDX when the Instrument was originally manufactured. When making repairs, BFDX reserves the right to use reconditioned or replacement items or parts that are at least functionally equivalent to original manufacturer specifications.
- 9. WARRANTY RETURNS FROM OUTSIDE THE U.S.** If an ITAR-controlled Instrument is to be returned to BFDX from outside the U.S., You must follow all steps set forth in Section 8. Failure to follow all instructions can result in a U.S. export violation, potentially necessitating acquiring a further export license. Further, shipping non-compliance may result in a several-week delay of the Instrument's return shipment to Customer. Customers outside the U.S. may be required to seek further information from their authorized distributor.
- 10. WARRANTY SERVICE RESPONSE TIMES.** If a defective Product is sent to BFDX under an RMA, BFDX will repair or replace the Product and deliver it to a carrier for return shipment to Customer, as promptly as possible, and in most cases within ten (10) working days after BFDX's receipt of the defective Product and all required RMA documentation. Except for incremental shipping costs as provided above, BFDX will not be liable for any delay in providing services under this Limited Warranty.
- 11. BREACH.** In the event of any breach of this Limited Warranty: (i) as to Instruments, Your sole remedy will be for BFDX to repair or replace the Instrument with new or refurbished parts, free of charge, at BFDX's facility and (ii) as to Software or Pouches, Your sole remedy will be for BFDX to repair, replace or correct such Software or Pouches (including, at BFDX's election, replacement with a new version of the Software). This Limited Warranty specifically includes labor and materials. BFDX will pay all costs associated with shipping and return shipping of Products only during the term of this Limited Warranty.
- 12. LIMITATIONS.** Except as expressly set forth above, BFDX makes no further or additional representations or warranties of any kind or nature with respect to the Products. Any description of the Products contained on BFDX's website or promotional materials is for the sole purpose of identifying them. No affirmation of fact or promise made by BFDX, on its website or otherwise, will constitute a warranty that the Products will conform to the affirmation or promise. BFDX DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, INTEROPERABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BFDX DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. The entire risk arising out of the use or performance of the Products remains with Customer. BFDX will not be liable for loss of or damage to systems, programs, or data; cost of procurement of substitute goods, services, or technology; or any special, indirect, incidental, consequential, or exemplary damages including, but not limited to, damages for loss of business profits or business interruption, based upon principles of contract, warranty, negligence, strict liability or other tort, breach of any statutory duty, principles of indemnity or contribution, or any other theory of liability, even if BFDX has been advised of the possibility of such damages. Notwithstanding anything to the contrary in this Limited Warranty, in no event will the liability of BFDX (whether arising from a claim based on contract, warranty, tort or otherwise), if any, to Customer under this Limited Warranty exceed the actual amount received by BFDX in connection with its sale or distribution of the applicable Product(s).
- 13. MISCELLANEOUS.**
- (i) All Limited Warranty provisions and agreements will be binding upon and ensure to the benefit of the parties and their respective legal representatives, successors and assigns. BFDX may assign its rights and delegate its duties under this Limited Warranty by written notice to Customer.
 - (ii) This Limited Warranty and the related certificate of coverage constitute the entire understanding of the parties with respect to the subject matter hereof. No amendment, modification, rescission or alteration of these terms will be binding unless made in writing, and signed by BFDX.
 - (iii) Every provision of this Limited Warranty is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Limited Warranty.
 - (iv) BFDX and Customer agree that the validity, construction and performance of this Limited Warranty will be governed by the laws of the State of Utah, USA (excluding any of its conflict of laws principles). Venue for any dispute or proceeding arising from or related to this Limited Warranty will be exclusively

vested in any state or federal court located in Salt Lake County, State of Utah, USA, and each party irrevocably and unconditionally consents to the jurisdiction of such courts and irrevocably and unconditionally waives (i) any right to trial by jury and (ii) any claims, defenses or objections, whether substantive or procedural, based upon lack of personal jurisdiction, inconvenient venue or the like.

- (v) Except to the extent expressly prohibited by applicable law, BFDX and Customer will be prohibited, and hereby irrevocably and unconditionally waives any right to bring any claim, demand or cause of action arising from or related to this Limited Warranty more than one (1) year after the expiration of the coverage period of this Limited Warranty.

14. U.S. GOVERNMENT-SPECIFIC PROVISIONS. BFDX warrants to the U.S. Government that the Products delivered hereunder are merchantable and fit for use for the particular purpose described in the applicable contract. In the event that the terms of BFDX's Limited Warranty conflict with the warranty terms contained in this clause, the terms of this clause will govern the contract, unless some other resolution is specified in the award document. Except as otherwise provided by an express warranty, BFDX will not be liable to the United States Government, or any of its agencies, employees, or agents, in a breach of warranty action for consequential damages resulting from any defect or deficiencies in accepted items. In the event that the terms of BFDX's Limited Warranty limitation of liability clause(s) place greater limits on BFDX's liability than do the terms contained in this clause, the terms of this clause will govern the contract.

For more information regarding BFDX's Limited or Extended Warranties, or to receive a quote for coverage on your Instrument, please contact us at 1- 800-735-6544. Be sure to have the serial number of your Instrument when requesting a quote.

Extended Warranty

Before returning any Product, please consult the instructions below and contact BioFire Diagnostics, LLC ("BFDX") Technical Support at either: (800) 735-6544, (801) 736-6354, or support@biofiredx.com. CUSTOMER AGREES TO ALL TERMS, CONDITIONS AND OBLIGATIONS CONTAINED IN THIS EXTENDED WARRANTY.

1. DEFINITIONS. "Pouch" means the clinical diagnostic thermal cycling oligonucleotide assays or primers, probes or reagents manufactured by BFDX. "Instrument(s)" means FilmArray® 1.5, FilmArray® 2.0, and/or FilmArray® Torch devices which are manufactured and/or distributed by BFDX. "Third-party Products" mean any Pouch, Instrument or ancillary product used with the Instruments that is manufactured by a party other than BFDX. "Product" means a Pouch, Instrument or parts or components thereof, and/or Software manufactured by BFDX. "Specifications" means the criteria established by BFDX in a user manual to measure, evaluate, or assess the operation or performance of the applicable Product subject to any updates or modifications by BFDX after receipt of the Product by Customer.

2. EXTENDED WARRANTY PURCHASE. This Extended Warranty can be purchased from BFDX or BFDX's authorized distributor at the time of Customer's original purchase or lease of the Instrument. Thereafter, Customer must apply for the Extended Warranty by contacting BFDX's authorized distributor or the BFDX Technical Support Department. As a precondition to purchasing an Extended Warranty after the time of the original purchase or lease, BFDX may require, in its sole discretion, that Customer: (a) ship the Instrument to BFDX for repair and recalibration to original manufacturer specifications; (b) upgrade the Software to the most recent version or release that would have been provided to Customer if the Extended Warranty had been maintained in effect from and after the time of Customer's original purchase or lease of the Instrument; and/or (c) the installation of any applicable bug fixes to the Software. If BFDX requires Customer to comply with any of these options, such requirement(s) will be at Customer's sole cost and expense (at BFDX's then current standard repair and replacement or Software upgrade/bug fix fees) and payable prior to purchasing this Extended Warranty.

3. WARRANTY TERM. THIS WARRANTY IS NEITHER AN ONGOING SERVICE NOR PREVENTATIVE MAINTENANCE AGREEMENT. This Extended Warranty begins on the date of expiration of the Standard Limited Warranty, and continues in effect for one year, or the period of time provided in the Sales Quote. Coverage is only effective upon payment by Customer. If Customer purchases an Extended Warranty after expiration of the Standard Limited Warranty, then the Extended Warranty Coverage begins once the Instrument has been checked and recalibrated by BFDX and shipped back to Customer as per Paragraph 7. This Extended Warranty does not alter, modify or replace BFDX's Standard Limited Warranty, but rather extends additional benefits for an additional period thereafter. The coverage period can be extended for additional one (1) year coverage periods by delivering written notice of renewal to BFDX's Customer Support Department, together with the then-current renewal premium quoted by BFDX's Customer Support Department, provided that the notice and renewal premium must be received by BFDX prior to the expiration of the then-current coverage period.

4. BENEFITS OF THIS EXTENDED WARRANTY. This Extended Warranty provides the original end-user customer ("Customer" or "You") with rights under this Extended Warranty. The Customer's rights and obligations under this Extended Warranty will bind and inure to the benefit of Customer's respective successors, heirs, executors and administrators and permitted assigns and provides the following benefits to Customer:

- (i) **Standard Limited Warranty Extension:** BFDX's Standard Limited Warranty applicable to the Instruments and Software will be extended for the Coverage Period of this Extended Warranty;
- (ii) **Instrument Repairs:** BFDX will furnish labor, parts and/or replacement equipment necessary to repair operational or mechanical breakdowns of an Instrument;
- (iii) **Software Upgrades:** BFDX will provide new versions, releases or upgrades of the Software, but only if and to the extent made generally available by BFDX to its customers using comparable BFDX-manufactured instruments during the Coverage Period of this Extended Warranty; provided, however, that BFDX may require that Customer install and use a Software upgrade as a condition precedent to its continued services under this Extended Warranty;
- (iv) **Optional Instrument Recalibration and Quality Inspection:** No more than one (1) time during each yearly Coverage Period, Customer may return an Instrument for recalibration, maintenance and quality inspection;
- (v) **Telephone Support:** BFDX currently offers twenty-four hour telephone support by calling BFDX's Customer Support Department subject to the terms, conditions and limitation of this Extended Warranty.

5. WARRANTY EXCLUSIONS. This Extended Warranty excludes: (i) repairs which are not necessitated by operational or mechanical breakdown during normal use; (ii) normal wear and tear not resulting in operational or mechanical breakdown; decontamination required as a result of use and operation; (iii) theft, loss, or misplacement; cosmetic damage or other damage that does not affect functionality; (iv) problems arising from or related to misuse, neglect, accident, viruses or reckless, abusive, willful or intentional conduct; (v) problems arising from or related to external electrical power sources; improper maintenance, repair, or disassembly (including partial disassembly) by anyone other than BFDX or its authorized representatives or using parts, accessories or supplies not provided by BFDX; (vi) problems arising from or related to usage which is not in accordance with instructions in the user manual published by BFDX for the Instrument or Software; (vii) problems arising from or related to failure to perform preventive maintenance as and when recommended by BFDX in the user manual published by BFDX for the Instrument; (viii) problems arising from or related to installation or execution of Software on any computer other than the computer sold by BFDX with the Instrument or on any computer which contains or runs operating system or applications software other than software loaded or installed at the time of delivery of such computer by BFDX; (ix) problems arising from any modification of the Instruments or Software without the prior written consent of BFDX; (x) the cost of new or additional equipment, devices, parts or accessories (other than the Instrument or its component parts, to the extent covered under this Extended Warranty) or third party software (other than the Software) required as a condition of implementing any Software upgrade, new version, workaround; (xi) Third Party Items, except to the extent assignable or transferable, BFDX assigns all manufacturer warranties of Third Party Items to its customers.

6. INITIATING WARRANTY CLAIMS AND SERVICE. In order to obtain service, contact Customer Support to evaluate the claim as directed above. Customer Support may ask Customer to report the issue in writing. BFDX may attempt to resolve the problem over the telephone. If your problem cannot be resolved over the telephone, BFDX will determine (in its sole discretion) the most practicable resolution, which may include one or more of the following: (i) shipment of new or reconditioned replacement parts on an exchange basis together with instructions for Customer to perform installation, (ii) shipment of a new or reconditioned replacement Instrument that is at least functionally equivalent to the original Instrument on an exchange basis, (iii) shipment of a new, in-service or reconditioned Instrument that is at least functionally equivalent to the original Instrument on a temporary “loan” basis, (iv) assistance from BFDX’s Field Support Specialists, or authorized distributors at Customer’s location, or (v) issuance of a return material authorization (RMA) for Customer to return the Product for repair or replacement by BFDX. If BFDX elects to ship a replacement Product to Customer, the original Product becomes BFDX property upon Customer’s receipt of the replacement. Customer must return the original Product to BFDX within twenty (20) days after Customer’s receipt of the replacement Product, or pay BFDX the retail value of the replacement Product.

7. CUSTOMER REQUIREMENTS PRIOR TO RETURN FOR SERVICE. If BFDX elects to repair a defective Product in its facility, the defective Product must be received by BFDX no later than thirty (30) days after the date BFDX issued the RMA. Prior to shipping the defective Product to BFDX, Customer must follow the return instructions specified by BFDX including, without limitation, decontamination, data backup procedures, other procedures specified by BFDX, and all shipping instructions. Failure to follow all instructions may result in delay of return of the Product. Customer is solely responsible for shipment of the Product to BFDX free of any biological, chemical or organic materials, agents or toxins and otherwise in accordance with all applicable laws, rules and regulations, and BFDX reserves the right to refuse delivery or return the product without service if Customer does not strictly comply with this requirement. Further, Customer is solely responsible for backing up any data to enable Customer to reconstruct or recover lost or altered data and for removing any confidential, proprietary or personal information. BFDX disclaims responsibility for any lost, damaged or destroyed software program, data or other information stored on any data storage media or any part of any Product covered by this Limited Warranty, and BFDX disclaims responsibility for deletion or alteration of the contents of any hard drive or data storage media which may occur during service of a Product. BFDX is not responsible for the restoration or reinstallation of any programs or data other than software installed by BFDX when the Instrument was originally manufactured. When making repairs, BFDX reserves the right to use reconditioned or replacement items or parts that are at least functionally equivalent to original manufacturer specifications.

8. WARRANTY SERVICE RESPONSE TIMES. If a defective Product is sent to BFDX under an RMA, BFDX will repair or replace the Product and deliver it to a carrier for return shipment to Customer, as promptly as possible, and in most cases within ten (10) working days after BFDX’s receipt of the defective Product and all required RMA documentation. Except for incremental shipping costs as provided below, BFDX will not be liable for any delay in providing services under this Extended Warranty.

9. DOMESTIC SHIPPING AND INSURANCE COSTS. BFDX is responsible for all domestic costs of shipping, insurance and related costs of delivery of the BFDX instrument (or defective component thereof).

10. INTERNATIONAL SHIPPING AND INSURANCE COSTS AND ADDITIONAL REQUIREMENTS. If an ITAR-controlled Instrument is to be returned to BFDX from outside the U.S., Customer must first contact BFDX’s Customer Support Department for an RMA. Customer must follow all shipping instructions provided by BFDX’s Customer Support Department, including using BFDX’s designated shipper (if any). Failure to follow all instructions can result in a U.S. export violation, potentially necessitating acquiring a further export license. Further, shipping non-compliance may result in a several-week delay of the Instrument’s return shipment to Customer. Customer will be charged a one-time flat handling fee of \$250.00 (Two Hundred Fifty United States Dollars) to offset shipment and return shipment costs, and BFDX will pay all other international (OCONUS) costs of shipping, in transit insurance, duty, taxes and related costs, except that Customer bears all risk of loss or damage during transit. BFDX will make all shipments in a commercially reasonable manner without obligation to incur any overnight, expedited or other special handling charges. However, when repair or replacement is covered under this Extended Warranty, if and to the extent BFDX is unable to repair or replace the BFDX instrument and deliver the BFDX instrument to a common carrier for return shipment to Customer within ten (10) business days after the later of (i) its receipt by BFDX or (ii) receipt by BFDX of all required RMA documents or information from Customer, BFDX will pay any incremental costs incurred for expedited delivery service to Customer. Except for such incremental shipping costs, BFDX will not be liable for any delay in providing services under this Extended Warranty.

11. ADDITIONAL CHARGES. If BFDX repairs or refurbishes an Instrument at Customer’s request, in circumstances where such repair or refurbishment is not covered by this Extended Warranty, Customer will pay for such repair or refurbishment at BFDX’s then current standard repair and replacement fees, plus applicable taxes, shipping and insurance costs. Payment will be due and payable within thirty (30) days following the date of BFDX’s invoice. Payments are deemed made when received by BFDX. Interest will accrue on any unpaid balances at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after the due date.

12. LIMITATIONS. Except as expressly set forth above, BFDX warrants only that its services under the Extended Warranty will be performed in a professional and workmanlike manner, consistent with its standard of care in the state and county in which its principal place of business is located. **BFDX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Some state laws do not allow the exclusion of implied warranties. Any implied warranties that may be imposed by law are limited in duration to the term of this Extended Warranty. Notwithstanding anything to the contrary in this Extended Warranty, in no event will the liability of BFDX (whether arising from a claim based on contract, warranty, tort or otherwise), if any, to Customer under this Extended Warranty exceed the actual amount received by BFDX in connection with its sale or distribution of the applicable Product(s). This limitation will apply regardless of the form of legal action. In the event BFDX replaces an Instrument with a new or reconditioned Instrument that is at least functionally equivalent to original Instrument or reimburses Customer for the original purchase price, minus the cost of prior repairs of the Instrument (calculated at BFDX’s normal service labor and materials rates), BFDX will have satisfied all of its obligations under this Extended Warranty. Repair or replacement of the Instrument, cure of the Software or refund of the

Extended Warranty price, minus the cost of prior repairs, are Customer's exclusive remedies for breach of this Extended Warranty. To the maximum extent permitted by law, BFDX will not be liable to Customer for indirect, special, incidental, or consequential damages arising from the services provided under this Extended Warranty, delay in furnishing services, or failure to furnish services, including without limitation, loss of data or software, loss of use or lost profits, whether based in contract, tort or otherwise, even if BFDX has been advised of the possibility of such damages. Some states do not allow the limitation or exclusion of incidental or consequential damages, so the above limitations and exclusions may not apply to a particular Customer.

13. MISCELLANEOUS.

- (i) The obligations of BFDX under this Extended Warranty are backed by the full faith and credit of BFDX. BFDX is the Extended Warranty seller and provider.
- (ii) Each of the provisions and agreements herein contained will be binding upon and ensure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. BFDX may assign its rights and delegate its duties under this Extended Warranty by written notice to Customer.
- (iii) This Extended Warranty and the Certificate of Coverage constitute the entire understanding of the parties with respect to the subject matter hereof. No amendment, modification, rescission or alteration of these terms will be binding unless made in writing, and signed by BFDX.
- (iv) Every provision of this Extended Warranty is intended to be severable. If any term or provision is found illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Extended Warranty.
- (v) BFDX and Customer agree that the validity, construction and performance of this Extended Warranty will be governed by the laws of the State of Utah, USA (excluding any of its conflict of laws principles). Venue for any dispute or proceeding arising from or related to this Extended Warranty will be exclusively vested in any state or federal court located in Salt Lake County, State of Utah, USA, and each party irrevocably and unconditionally consents to the jurisdiction of such courts and irrevocably and unconditionally waives (i) any right to trial by jury and (ii) any claims, defenses or objections, whether substantive or procedural, based upon lack of personal jurisdiction, inconvenient venue or the like.
- (vi) Except to the extent expressly prohibited by applicable law, BFDX and Customer will be prohibited, and hereby irrevocably and unconditionally waives any right to bring any claim, demand or cause of action arising from or related to this Extended Warranty more than one (1) year after the expiration of the Coverage Period of this Extended Warranty.

For more information regarding BFDX's Extended Warranty, or to receive a quote for coverage on your Instrument, please contact us at 1-800-735-6544. Be sure to have the serial number of your Instrument when requesting a quote.