



DYNEX INSTRUMENT SERVICE AGREEMENT

1. **Term of Agreement.** The term of this agreement ("Agreement") shall be for a period of thirty-six (36) months from the date of the Customer's purchase order for the Services ("the Term"), unless otherwise terminated or canceled by either party, as provided herein.
2. **Performance of Services.**
 - 2.1. The services to be performed by DYNEX shall be such as will repair/maintain (whichever is applicable) the DYNEX instruments (the "Instruments") in good operating condition as determined by the specifications for such DYNEX Instruments.
 - 2.2. Repair and/or preventive maintenance service shall be offered as described in DYNEX Technologies Automated Systems Service and Technical Support Offerings attached hereto ("Services").
 - 2.3. DYNEX shall be released from its obligations under this Agreement and may terminate/cancel this Agreement if the Customer makes significant alterations or modifications to the Instrument(s), uses reagent tips or sample tips that have not been validated by DYNEX with the Instruments, and/or performs, or attempts to perform, services on it, or any portion thereof.
 - 2.4. After notification of the need for repair service by the Customer, DYNEX will use reasonable commercial efforts to perform the Services after a diagnosis is made as to the probable cause(s) within the designated time of the Service Level Agreement selected by the Customer. The Customer will use its best efforts to provide adequate symptom and unmet expectation information on a timely basis such that a diagnosis can be made. Preventive Maintenance will be scheduled in advance.
 - 2.5. The Services do not include: (i) replacement of batteries, fuses, hoses, tubing, filters, computer, monitor, printer and other consumable supplies, accessories, and items; painting or refinishing; inspecting altered instrumentation; making specification changes or performing services in connection with relocating instrumentation; adding or removing accessories, attachments, or other devices; or performing routine customer procedures as identified in the operator's manual; (ii) electrical or plumbing work external to the Instrument(s); maintenance of accessories, alterations, attachments, or other devices not furnished by DYNEX; (iii) Services which are unreasonable for DYNEX to render because of alterations of attachments; (iv) Services and parts due to failure caused by fluids or operational supplies used by or with the Instrument; and (v) Labor and supplies required to decontaminate the Instrument(s) in preparation for servicing.
3. **Charges.** Customer shall pay DYNEX, on an annual basis, according to the level of service selected by Customer in the Dynex System Service Agreement Signup Sheet at the price listed in the Agility®, DSX® and DS2® Field Service Agreement and Installation/Training Prices attached hereto.
4. **Certification of DYNEX Instruments.** As a condition precedent to DYNEX's obligations hereunder, the Instrument(s) must either be under warranty prior to the effective date of this Agreement or DYNEX shall inspect the Instrument(s) on arrival at the Customer's site to determine if/they are in good working order. If the inspection shows that the Instrument(s) are not in good working order, DYNEX will provide the Services necessary to ensure the Instruments meet product specifications outlined in the operator's manual. Actual parts and labor for provision of these Services will be billed to the Customer at prevailing rates.
5. **Warranty.** DYNEX warrants all work performed pursuant to Paragraph 2, to be free from defects in workmanship for a period of ninety (90) days from the date DYNEX has finished providing the Services. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
6. **Termination/Cancellation.**
 - 6.1. DYNEX may terminate/cancel this Agreement if: (1) the Customer fails to pay DYNEX any charges required to be paid hereunder; (2) the Customer is in default of any provisions of this Agreement and such default is not cured within thirty (30) days after DYNEX gives notice thereof pursuant to Paragraph 12; or (3) the Customer becomes insolvent or seeks protection, voluntarily or involuntarily, under any reorganization or bankruptcy law. DYNEX may also terminate/cancel this Agreement if the Customer makes significant alterations or modifications to the Instrument(s) pursuant to Paragraph 2.3 of this Agreement.
 - 6.2. If DYNEX terminates/cancels this Agreement pursuant to Paragraph 6.1 above, DYNEX may (i) declare all amounts owed to DYNEX to be immediately due and payable; and (ii) cease performance of all Services hereunder, without liability to the Customer.
 - 6.3. Customer may terminate this Agreement at any time, for any reason, provided that Customer provides DYNEX thirty (30) days written notice prior to such termination.
7. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. Indemnification as to any negligence on the part of Dynex or their agents, employees, etc. Indemnification for any third party allegations for violations of intellectual property rights.
8. **Confidentiality.**
 - 8.1. DYNEX agrees that it will maintain Customer's confidential and proprietary information in confidence, will not disclose or disseminate the information to any third party, without Customer's express, prior written consent, and will use the information only for the purposes of fulfilling its obligations under this Agreement. DYNEX agrees that it will disclose the information provided by Customer only to DYNEX's employees, officers, directors, and consultants who have a need to know the information.
 - 8.2. The foregoing limitations shall not apply to information which DYNEX can demonstrate was (1) in the public domain at the time of its disclosure by Customer, (2) in

DYNEX Technologies, Inc.
 14340 Sullyfield Circle
 Chantilly, VA 20151 U.S.A. www.dynex.com

Technical Support: (703) 803-1202
DYNEX main line: Toll Free (800) 288-2354 or (703) 631-7800 (press 4)
Email: Techservice@dynex.com
Fax line: (703) 803-1441



DYNEX's possession at the time of its disclosure by Customer and was not acquired directly or indirectly from Customer, (3) published or became part of the public domain after its disclosure by Customer through no act or failure on DYNEX's part, (4) obtained by DYNEX from a third party not owing obligations of confidence to Customer, or (5) required to be disclosed by an order of a governmental agency, legislative body or court of competent jurisdiction; provided that DYNEX provides Customer with prompt notice of such request or requirement, (6) Public Records Act, (7) This contract is a public record.

9. DYNEX's Employees and Insurance.

9.1. Any portion of the Services to be provided on Customer's

premises by DYNEX's employees, agents, or contractors shall be performed by properly qualified, factory trained, and supervised personnel. DYNEX shall instruct all of its employees, agents, and contractors that they shall (i) enter and leave Customer's premises in compliance with Customer's site entry and exit procedures, and (ii) conduct themselves on Customer's premises in a professional and workmanlike manner and in full compliance with Customer's rules for site security, environmental compliance, and health and safety.

9.2. DYNEX shall maintain worker's compensation,

automobile, and general liability insurance in effect and shall provide a certificate of insurance to Customer upon request by Customer.

10. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may transfer or assign this Agreement or any right, covenant or obligation hereunder without the prior written consent of the other party, except no consent shall be required if such transfer or assignment is (a) the result of the merger or consolidation of a party with a third party or the sale of the majority or controlling interest of stock, or the sale of all or substantially all of the assets of the business to which this Agreement relates or (b) to an affiliate of a party.

11. Force Majeure. DYNEX shall not be responsible for any loss, damage, or delay, or failure to provide Service caused by acts of government, strikes, fire, explosions, theft, riots, flood, civil disorder, war, unusually severe weather, acts of God, and the failure of others to supply parts, materials, or supplies in a timely manner, or any other cause beyond DYNEX's reasonable control. Dynex provides on-site response within the applicable time limits on a best-effort basis, as circumstances beyond Dynex control, such as airline cancellations, may lead to unavoidable scheduling conflicts or delays.

12. Compliance with Laws. DYNEX represents and warrants that the performance of the Services and the furnishing of goods and/or services called for by this Agreement shall be in accordance with the applicable standards, provisions, and stipulations of all pertinent Federal, State, or local laws, rules, and regulations.

13. Notices. All notices, requests, demands, and other communications relating to this Agreement which DYNEX is required or desires to give to Customer shall be directed to Customer at the address set forth on the Service Agreement Signup Sheet attached hereto. All notices, requests, demands, and other communications relating to this agreement which Customer is required or desires to give to DYNEX shall be

directed to DYNEX at the following address: **Dynex Technologies, Inc., Technical Service, 14340 Sullyfield Circle, Chantilly, VA 20151-1621, facsimile: 703-803-1441, telephone: 703-631-7800.** Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing, shall be served by hand, telephone facsimile (with receipt confirmed by telephone), or by certified mail, and shall take effect on date of service or three (3) days after the date of mailing, as appropriate.

14. Choice of Law. This Agreement shall be construed and interpreted and the legal relations created hereby shall be determined in accordance with the laws of the Commonwealth of Virginia, excluding those laws relating to choice of law.

15. Arbitration. The parties shall negotiate in good faith and use reasonable efforts to settle any dispute or controversy arising out of or relating to this Agreement, its construction or its actual or alleged breach. If such negotiation does not result in a full resolution of such dispute or controversy, the remaining dispute or controversy will be finally decided by a single arbitrator, who shall agree to act in accordance with the commercial arbitration rules of the American Arbitration Association, pursuant to an arbitration held in Washington, D.C. The decision and award of the arbitrator shall be final, conclusive and enforceable as to both parties and shall be confirmed in any court of competent jurisdiction. If the parties are unable to select an arbitrator, the AAA is empowered to select the arbitrator. Each party shall pay its own costs incurred in connection with the arbitration and 50% of the fees and costs of the AAA and the arbitrator. Neither party shall be liable for special, consequential or punitive damages.

16. Waiver. A party's failure to insist upon the performance of any or all of the terms, covenants, or conditions of this Agreement or failure to exercise any rights or remedies hereunder shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies unless otherwise provided for herein.

17. Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction or arbitrator to be unenforceable in any respect, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

18. Entire Agreement. This Agreement represents the entire agreement between the parties relating to the subject matter hereof, and shall supersede any other agreements, whether written or oral. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration or modification of any of the provisions or attachments to this Agreement shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original document. All such separate counterparts will constitute only one and the same Agreement. The parties agree that copies of signatures (e.g. PDF or facsimile) have the same effect as original signatures.





DYNEX System Service Agreement Signup Sheet

| | |
|-----------------------------------|--|
| Instrument Model: | <input type="checkbox"/> Agility <input type="checkbox"/> DSX <input checked="" type="checkbox"/> DS2 <input type="checkbox"/> Multiplex |
| Serial Number: | |
| System Owner Contact Name: | County of Monterey |
| System Owner Account Name: | |
| Address: | 1270 Natividad Road |
| City, State, Zip: | Salinas, CA 93906 |
| Phone Number: | (831) 755-4516 |
| Fax Number: | |
| E-Mail: | |
| User Contact Name: | Donna Ferguson |
| User Account Name: | |
| Address: | 1270 Natvidad Road |
| City, State, Zip: | Salinas, CA 93906 |
| Phone Number: | (831) 755-4516 |
| Fax Number: | |
| E-Mail: | fergusond@co.monterey.ca.us |

Choose which Service Agreement you require:

- "PM and Parts" Annual Service Agreement
 "Preferred" Annual Service Agreement \$31,779.00
 "Premium" Annual Service Agreement Service Agreement Price: (\$10,593.00 per year)

Agreement Start Date: Upon execution **Agreement End Date:** Three (3) year from execution

- Yes, our facility requires a vendor maintenance program for service such as Vendormate, Reprax, IntelliCentrics, Sympir or a Processing Fee and the cost of the required program(s) will be added into the P.O. amount for cost of this service agreement.

Vendor Program name: _____

- No other paperwork or vendor maintenance programs are required to service our Dynex unit(s).

Customer Accepted REFER TO SIGNATURE PAGE

Printed Name _____

Signature _____

Date _____

Purchase Order Number _____ (a hard copy or PDF of the P. O. is required).

Please send to: Dynex Technologies, Inc. Technical Service, 14340 Sullyfield Circle, Chantilly, VA 20151-1621

Dynex Received P.O. and Accepted on _____ **by** _____

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Elsa M. Jimenez, Director of Health

Date: _____

Approved as to Form

By:  _____
County Counsel

Date: 8/1/2023 | 4:16 PM PDT

Approved as to Fiscal Provisions

By:  _____
Auditor/Controller


Date: 8/1/2023 | 8:10 AM PDT

Approved as to Liability Provisions

By: _____
Risk Management

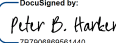
Date: _____

CONTRACTOR

By:  _____
Signature of Chair, President, or Vice President

Alez Azar, Vice President, Global Sales & Marketing
Name and Title

Date: 7/19/2023 | 12:38 PM EDT

By:  _____
Signature of Secretary, Asst. Secretary, CFO,
Treasurer, or Asst. Treasurer

Peter B. Harker, Chief Financial Officer
Name and Title

Date: 7/26/2023 | 8:45 AM EDT

County Board of Supervisors' Agreement No _____ approved on _____