

# HEALTH MANAGEMENT SYSTEMS, CORP.

## Reagent Rental Agreement For Cholestech LDX Analyzer

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2009, between Health Management Systems, Corp. (hereinafter called "HMSC") at 6913 K. Avenue, Suite 304, Plano, TX 75074 and \_\_\_\_\_, (hereinafter called "Participant") at \_\_\_\_\_.

Effective starting date of agreement: \_\_\_\_\_

### Terms and conditions

1. **Appointment & Acceptance** – HMSC grants Participant, and Participant accepts the right to use the Cholestech LDX Analyzer(s) listed in this agreement on a reagent rental basis. The following items will be included: LDX Analyzer & power supply, Training video, and Users manual. Participant will be responsible for all other accessories and supplies related to the use of this equipment. A \$250.00 deposit per LDX Analyzer will be required prior to shipment.
2. **Term of Agreement** – The term of this agreement is one year from the effective date. This agreement will automatically renew, for additional one-year periods, unless written notice is given by the Participant ninety (90) days prior to expiration. HMSC reserves the right to non-renewal of this agreement.
3. **Exclusive Purchase** – The right for Participant to use reagent rental equipment under this agreement is based on the exclusive purchase of all cassettes, tubes, and plungers designed for the LDX directly from Health Management Systems, Corp. It is understood that products purchased from HMSC are not for resale. The purchase of any Cholestech LDX Cassettes, Capillary Tubes, or Capillary Plungers from another source other than HMSC will result in the immediate termination of this agreement.
4. **Price** – Prices for HMSC distributed products will not exceed manufacturers suggested list price. Current list pricing is attached as Exhibit A. HMSC will make every effort to give 30 days notice on all price increases. All shipments will be made F.O.B. from HMSC distribution shipping center.
5. **Ordering, Delivery, Credit Policy and Terms of Payment** – Orders are to be placed by Participant via fax, telephone or any applicable electronic means provided by HMSC directly to the HMSC corporate office. Normal delivery will be by HMSC approved 2<sup>nd</sup> Day service. The cost of shipping will be included on invoice to Customer. For same day shipping, the order must be received in the HMSC corporate office by 2:00 PM Central time. After 2:00 PM Central time a \$25.00 fee may be assessed for same day shipments. Payment terms will be Net 30 days from date of invoice. A 1.5% monthly interest rate shall be automatically applied to all outstanding balances not paid within terms.
6. **Cassette Usage** – If the purchase volume on cassettes is less than 500.00 per reagent rental analyzer during any calendar month a rental fee of \$150.00 per deficient analyzer will be

charged for that month. Usage assessment will start on the first day of the calendar month following the placement date of the LDX.

7. **Analyzer Service** – HMSC agrees to maintain the equipment in proper functioning order during the term of this contract. HMSC makes no other warranties, express or implied, or of merchantability, for this equipment. Repair without charge is HMSC's only obligation under this warranty. HMSC will not be responsible for any consequential or incidental damages resulting from the sale, use, or improper functioning of this equipment even if loss or damage is caused by the negligence or other fault of HMSC. Such damages, for which HMSC will not be responsible include, but are not limited to, loss of revenue or profit, downtime costs, loss of use of the equipment, cost of any substitute equipment facilities or services or claims of your customer for such damages. This limitation of liability will not apply to claims for injury to persons or damage to property caused by the sole negligence of the part of HMSC, or persons under its direction and control. This Cassette Rental Plan is limited to the contiguous United States. This agreement does not cover service or parts for any attachments, accessories, or alterations not marketed by HMSC, nor to correct problems from their use.

8. **Assignment** – Without the prior written consent of HMSC, the Participant shall not assign, transfer, or pledge the rental equipment or any part thereof, or any interest therein; or circulate or rent the equipment or any part thereof; or permit the equipment or any part thereof to be used by anyone other than, the Participant, the Participant's employee or the Participant's contractor(s).

9. **Ownership** – The rental equipment, serial numbers listed on Exhibit B are, and shall at all times remain, the sole and exclusive property of HMSC, and the Participant shall have no right, title or interest therein except as expressly set forth in these Terms and Conditions.

10. **Participant Responsibility** – The Participant agrees to provide reasonable care for the equipment; to return the equipment in the same condition as received, ordinary wear and tear expected; and to notify HMSC immediately of loss or damage. Customer will be responsible for replacement of lost or damaged equipment listed on Exhibit B.

11. **Trademarks, Trade Names, and Trade Dress** – All sales and rentals are made with the understanding that the Cholestech and HMSC trademarks, Trade Names, Trade Dress, and original packaging will not be misused.

12. **Taxes** – Sales, use, or other taxes measured by sales or receipts are not included in the prices shown. Where applicable, such taxes will be billed if a valid exemption certificate is not furnished.

13. **Governing Law** – The Term and conditions of this agreement shall be governed by the laws of the State of Texas.

14. **Termination of Agreement** – HMSC reserves the right to terminate this agreement if any one of the conditions stated in this agreement is not met by Participant.

15. **Notice** – Any notice required to be given hereunder shall be given in writing, by personal delivery, or by certified or registered mail, return receipt requested, sent to the party at its address set forth on the signature page hereto, or such other address as may be specified by notice given in accordance herewith. Notice shall be deemed given upon receipt by the party to which it is sent or refusal to accept delivery.

16. **Entire Agreement** - This Agreement is the entire agreement between the parties with respect to the subject matter hereof..

17. **Time of Essence** – Time is of the essence of each provision of this agreement.

By: \_\_\_\_\_  
Brian Bullock

By: \_\_\_\_\_

Title: President / CEO

Title: \_\_\_\_\_

Health Management Systems, Corp.  
6913 K. Avenue, Suite 304  
Plano, TX 75074

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

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

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