

## **BD TERMS AND CONDITIONS**

**EFFECTIVE DATE: September 1, 2021**

These BD Terms and Conditions (this "**Agreement**") are between Becton, Dickinson and Company ( "**BD**," "**we**" or "**us**") and you. BD is the manufacturer and distributor of the BD Veritor™ At Home COVID-19 Test (the "**BD Test**"), which includes both the physical components of the test and use of the mobile application provided by Scanwell Health (the "**Scanwell App**").

We refer to you, and any minor child or other person for whose use and on whose behalf you have the legal right to purchase and use the BD Test, as a "**User**." We refer to the individual who uses the BD Test as the "**Test Subject**." If you use the BD Test on behalf of another person, you affirm that you have a legal right to purchase and use the BD Test on that person's behalf.

**THIS AGREEMENT GOVERNS YOUR USE OF THE BD TEST. The Scanwell App has its own [Terms of Use](#) and related [Privacy Policy](#). This Agreement is a binding contractual document. By checking the box acknowledging your consent to the terms of this Agreement in the Scanwell App, you agree to be bound by all the terms and conditions herein as well as the Scanwell Health [Terms of Use](#) and [Privacy Policy](#).**

**PLEASE NOTE THAT THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION OF DISPUTES PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES (RATHER THAN JURY TRIALS OR CLASS ACTIONS) TO THE EXTENT PERMITTED BY APPLICABLE LAW.**

### **1. Scope of this Agreement; Not Medical or Healthcare Services**

**The BD Test is not medical or healthcare services.** You understand that BD is not a healthcare professional and does not provide medical, health or other professional services or advice, nor do we verify the accuracy of the BD Test or your Personal Data (as such term is defined in Section 2 below). The BD Test is not a replacement for proper medical care, and you agree that the User is solely responsible for obtaining proper treatment for his or her conditions. You may provide the information and reports received from the BD Test to a healthcare provider. However, you understand that the BD Test is provided without warranty except as required by law or as otherwise expressly set forth in this Agreement.

### **2. Data Collection and Use**

**Data collected through the BD Test is subject to our Privacy Statement and the Scanwell Health [Privacy Policy](#).** You understand that by using the BD Test, the

information the User provides through the use of the BD Test in the Scanwell App, including all data collected when you first accessed the Scanwell App, the Test Subject data you enter into the Scanwell App portion of the BD Test, and the results data that the BD Test provides to you (collectively, “**Personal Data**”), will be provided to BD and to Scanwell Health and will be subject to the Privacy Statement available at <https://www.bd.com/en-us/privacy-statement> as well as the Scanwell Health Privacy Policy available at <https://www.scanwellhealth.com/legal/privacy-policy>. BD will not receive any Test Subject or results data associated with your use of any other product available through the Scanwell App (other than the BD Test).

### **3. Changes**

BD can change the terms of this Agreement by notifying you of such changes by any reasonable means. Your affirmative acknowledgment of the new terms (via a checkbox or other consent mechanism) or your continued use of the BD Test will be acceptance of the new terms. Any such changes will not apply to any dispute between you and us arising prior to the date on which we notified you of the revised Agreement incorporating such changes.

### **4. Scanwell Application**

In order to use the BD Test, the User must have a mobile telephone or other device on which the Scanwell App can be installed. The Scanwell App is controlled by Scanwell Health, and BD is not responsible for the function, accessibility or content of the Scanwell App. Please review the Scanwell Health [Terms of Use](#) and [Privacy Policy](#) and all other material provided by Scanwell Health with respect to your downloading, accessing and using the Scanwell App. If you have any issues with the Scanwell App, those issues should be directed to Scanwell Health.

Without limiting the provisions of this Agreement or expanding the scope of BD's responsibilities, BD is not responsible for outages or defects in your mobile device, Internet connectivity, the Scanwell App, other third party software or any other event outside of BD's direct control.

### **5. Age**

By agreeing to this Agreement, you are representing that you are of the age of majority of the country in which you reside and have the legal capacity to enter into this Agreement as a binding contractual document.

### **6. Disputes and Governing Law**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL DISPUTES ARISING OUT OF OR RELATED TO THE BD TEST, THIS AGREEMENT OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU AND BD RELATED TO THE BD TEST, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION OR ANY

OTHER LEGAL THEORY (EACH, A "DISPUTE"), WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY, AND YOU AGREE THAT BD AND YOU ARE EACH WAIVING THE RIGHT TO TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS. **YOU FURTHER AGREE THAT CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED, AND THAT YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION.**

THE ARBITRATION WILL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNDER ITS CONSUMER ARBITRATION RULES (CURRENTLY AVAILABLE <https://adr.org/sites/default/files/Consumer-Rules-Web.pdf>), AS AMENDED BY THIS AGREEMENT. THE ARBITRATOR WILL CONDUCT HEARINGS, IF ANY, BY TELECONFERENCE OR VIDEOCONFERENCE, RATHER THAN BY PERSONAL APPEARANCES, UNLESS THE ARBITRATOR DETERMINES UPON REQUEST BY YOU OR BY US THAT AN IN-PERSON HEARING IS APPROPRIATE. ANY IN-PERSON APPEARANCES WILL BE HELD AT A LOCATION WHICH IS REASONABLY CONVENIENT TO BOTH PARTIES WITH DUE CONSIDERATION OF THEIR ABILITY TO TRAVEL AND OTHER PERTINENT CIRCUMSTANCES. IF THE PARTIES ARE UNABLE TO AGREE ON A LOCATION, SUCH DETERMINATION SHOULD BE MADE BY THE AAA OR BY THE ARBITRATOR. THE ARBITRATOR'S DECISION WILL FOLLOW THE TERMS OF THIS AGREEMENT AND WILL BE FINAL AND BINDING. THE ARBITRATOR WILL HAVE AUTHORITY TO AWARD TEMPORARY, INTERIM OR PERMANENT INJUNCTIVE RELIEF OR RELIEF PROVIDING FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT, BUT ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THE INDIVIDUAL CLAIM BEFORE THE ARBITRATOR. THE AWARD RENDERED BY THE ARBITRATOR MAY BE CONFIRMED AND ENFORCED IN ANY COURT HAVING JURISDICTION THEREOF. NOTWITHSTANDING ANY OF THE FOREGOING, NOTHING IN THIS AGREEMENT WILL PRECLUDE YOU FROM BRINGING ISSUES TO THE ATTENTION OF FEDERAL, STATE OR LOCAL AGENCIES AND, IF THE LAW ALLOWS, THEY CAN SEEK RELIEF AGAINST US FOR YOU.

Except to the extent prohibited by applicable law, the terms of this Agreement are governed by the laws of the State of New Jersey, U.S.A., without regard to its principles of conflicts of law and regardless of your location.

In the event of a dispute arising under or relating to this Agreement, the disputing party must provide the other party with written notice of the dispute, including the facts giving rise to the dispute and the relief sought by the disputing party. We will provide such notice by email to your email address provided with the BD Test. You will provide such notice to BD by mail or overnight delivery at the following address: General Counsel, 1 Becton Drive, Franklin Lakes, New Jersey 07417 USA.

## **7. No Warranties**

EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, AND EXCEPT FOR ANY LIMITED WARRANTY INCLUDED IN THE PHYSICAL TEST'S LABELING, THE BD TEST IS PROVIDED "AS-IS" AND ON AN "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AND YOU USE THE BD TEST AT YOUR OWN RISK.

EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS PROHIBITED UNDER APPLICABLE LAW, BD DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR USE, QUIET ENJOYMENT, ACCURACY, OPERATION, COMPLIANCE WITH DOCUMENTATION AND NON-INFRINGEMENT RELATED TO THE BD TEST. BD DISCLAIMS, AND THIS AGREEMENT DOES NOT INCLUDE, THE PROVISIONS OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, THE UNIFORM COMMERCIAL CODE, THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, AND ANY OTHER PROVISIONS IMPLIED INTO THIS AGREEMENT IF NOT DISCLAIMED.

BD DOES NOT MAKE ANY WARRANTIES THAT THE BD TEST WILL MEET YOUR REQUIREMENTS, BE RETRIEVABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.

EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS PROHIBITED UNDER APPLICABLE LAW, BD DOES NOT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE BD TEST.

BD DOES NOT WARRANT ANY THIRD-PARTY DEVICE, SMART DEVICE, SOFTWARE, SERVICE OR DATA THAT YOU MAY USE IN CONNECTION WITH THE BD TEST, WHETHER OR NOT SUCH THIRD PARTY ITEM IS DESCRIBED IN, OR AVAILABLE OR CAN BE CONNECTED TO THROUGH, THE BD TEST.

NO INFORMATION OR COMMUNICATIONS, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM OR THROUGH THE TEST WILL CREATE ANY WARRANTY, EXCEPT FOR ANY LIMITED WARRANTY INCLUDED IN THE PHYSICAL TEST'S LABELING. THIS DOES NOT APPLY TO YOUR RIGHTS WITH RESPECT TO DEFECTIVE OR FAULTY PHYSICAL TESTS.

BD DOES NOT ASSUME ANY OBLIGATION TO, AND DOES NOT WARRANT THAT IT WILL, CREATE OR INCLUDE ADDITIONAL FEATURES OR FUNCTIONALITY FOR THE BD TEST.

EXCEPT AS INCLUDED IN THE PHYSICAL TEST'S LABELING, AND WITHOUT LIMITING YOUR RIGHTS UNDER APPLICABLE LAW, IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE BD TEST, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE BD TEST.

## 8. Liability Limitations and Your Responsibility

SUBJECT TO SECTION 9, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL BD, BD'S AFFILIATES, LICENSORS, SUPPLIERS AND OTHER THIRD PARTIES WITH WHICH BD HAS A CONTRACTUAL RELATIONSHIP (INCLUDING ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, AND AGENTS) HAVE ANY LIABILITY WHATSOEVER ARISING FROM OR RELATING TO THE BD TEST OR THIS AGREEMENT, WHETHER FOR DIRECT OR ANY OTHER TYPE OF DAMAGES WHATSOEVER.

SUBJECT TO SECTION 9, EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS PROHIBITED UNDER APPLICABLE LAW, NEITHER BD, ITS AFFILIATES, NOR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUPPLIERS (COLLECTIVELY, "**BD PARTIES**") SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE OF OR INABILITY TO USE THE TEST.

SUBJECT TO SECTION 9, EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS PROHIBITED UNDER APPLICABLE LAW, NONE OF THE BD PARTIES SHALL BE LIABLE FOR ANY CONSEQUENTIAL, UNFORESEEABLE, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OR DAMAGES RESULTING FROM LOSS OF DATA OR BUSINESS INTERRUPTION WHETHER THE CLAIM OR DAMAGES ARE BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), EXTRA-CONTRACTUAL LIABILITY, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, EVEN IF BD PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES EXCLUDED IN THIS SECTION 8, AND EVEN IF SUCH EXCLUSIONS CAUSE THIS AGREEMENT OR ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE.

SUBJECT TO SECTION 9, EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS PROHIBITED UNDER APPLICABLE LAW, NONE OF THE BD PARTIES SHALL BE LIABLE FOR TOTAL DAMAGES FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE BD TEST IN AN AGGREGATE AMOUNT GREATER THAN \$100.

SUBJECT TO SECTION 9, EXCEPT TO THE EXTENT THAT SUCH EXCLUSION OR LIMITATION IS PROHIBITED UNDER APPLICABLE LAW, NONE OF THE BD PARTIES SHALL BE LIABLE FOR THE ACTIONS OR OMISSIONS OF A USER OR ANY THIRD PARTY.

TO THE EXTENT THAT WE MAY NOT, AS A MATTER OF APPLICABLE LAW, DISCLAIM ANY IMPLIED WARRANTY OR LIMIT OUR LIABILITIES, THE SCOPE AND DURATION OF SUCH WARRANTY AND THE EXTENT OF OUR LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH APPLICABLE LAW, AND THIS AGREEMENT WILL BE DEEMED MODIFIED TO THE EXTENT NECESSARY TO COMPLY WITH SUCH APPLICABLE LAW.

## **9. Mandatory Liability**

Nothing in Section 8 is intended to limit or exclude liability where such liability is mandatory under applicable law and arises from the following: (a) death or personal injury resulting directly from willful or negligent act(s) or omission by BD or any of its employees or agents; (b) any fraudulent misrepresentation on the part of BD; (c) any breach of an essential contractual duty; or (d) any willful misconduct on the part of BD, or any of its employees or agents.

## **10. Your Responsibility**

Except to the extent prohibited under applicable law, you agree to indemnify, defend and hold harmless BD, our affiliates, licensors, suppliers and other contract relationships (including the officers, directors, employees, consultants, and agents of each) from and against any and all third-party claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees and court costs) that such parties may incur as a result of or arising from (1) any data or information you submit, or transmit through the Scanwell App, (2) your use of the BD Test, (3) your violation of this Agreement, or (4) your violation of any rights of any other person or entity.

## **11. Notices; Questions or Complaints**

Except as expressly provided elsewhere in this Agreement, we will provide any notice under this Agreement by email to the email address you provided in connection with the BD Test. You will provide any notice under this Agreement to BD (or contact us regarding any question or complaint) by mail or overnight delivery at the following address: General Counsel, 1 Becton Drive, Franklin Lakes, New Jersey 07417 USA

If you have a question or complaint regarding the BD Test, and are located in the United States, please contact 844-4-VERITOR.

California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, California 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

## **12. Severability**

In the event that any court holds any provision of this Agreement to be void, invalid or unenforceable, such provision will be modified to the minimum extent necessary to be effective, valid and enforceable while preserving the original intentions of the parties to the greatest extent possible, and the other provisions of this Agreement will remain in full force and effect and enforceable according to their terms.

## **13. Complete Agreement**

This Agreement is the complete and final agreement between the parties relating to the BD Test; supersedes any prior agreements or communications between the parties; and may only be modified as described in this Agreement (see Section 3 "Changes"). Failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect.