

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

23-1280

SAP Number

## Arrowhead Regional Medical Center

Department Contract Representative	<u>William L. Gilbert</u>
Telephone Number	<u>(909) 580-6150</u>
Contractor	<u>BioMérieux, Inc.</u>
Contractor Representative	<u>Gordon Marsh</u>
Telephone Number	<u>(385) 214-8830</u>
Contract Term	<u>December 5, 2023 through</u> <u>December 4, 2028</u>
Original Contract Amount	<u>\$3,407,187</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>Non-financial</u>
Cost Center	<u>9184804200</u>

**Briefly describe the general nature of the contract:** Agreement with BioMérieux, Inc. for the purchase of respiratory virus rapid/diagnostic test kits in the not-to-exceed amount of \$3,407,187 or term of December 5, 2023 through December 4, 2028.

### FOR COUNTY USE ONLY

Approved as to Legal Form

► Bonnie Uphold

Bonnie Uphold, Supervising Deputy County Counsel

Date 11-28-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► William L. Gilbert

William L. Gilbert, Director

Date

11/29/23



## Reagent Purchase Agreement

This Reagent PURCHASE AGREEMENT ("Agreement") is effective as of the date of the last signature below ("Effective Date") by and between **BIOMÉRIEUX, INC.**, a Missouri Corporation located at 515 Colorow Dr, Salt Lake City, Utah 84108 ("bioMérieux") and **San Bernardino County**, a political subdivision organized existing under the laws and constitution of the State of California, ("Customer") on behalf of Arrowhead Regional Medical Center, located at 400 North Pepper Avenue, Colton, California, 92324, each a "Party" and collectively the "Parties".

1. **Products Covered** – This Agreement covers the Consumables set forth in the attached Exhibit A (collectively, the "Products").
2. **Contract Effective Date** - This Agreement becomes effective upon the date of execution.
3. **Purchase of Consumables** - Customer agrees to purchase the Consumables identified on the attached Exhibit A on the terms and conditions set forth herein.
4. **Integration & Construction.** Regardless of whether attached as exhibits, the following are expressly incorporated into and made a part of this Agreement by reference: (a) bioMérieux's Terms & Conditions attached hereto as Exhibit B and incorporated herein, and (b) the Sales Quote, attached hereto as Exhibit A. By placing an order, Customer expressly agrees to the term of this Agreement. All other terms are excluded whether proposed by Customer or bioMérieux. If there is an inconsistency between any provision of any other document and this Agreement, the relationship of the parties shall be governed by this Agreement. This Agreement constitutes the entire agreement of the Parties as to this transaction.
5. **Electronic Signature.** The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

**WE HAVE READ AND AGREE TO THE ABOVE, INCLUDING THE BIOMÉRIEUX TERMS AND CONDITIONS ATTACHED BELOW AS EXHIBIT B WHICH ARE HEREBY INCORPORATED BY REFERENCE AS IF FULLY STATED HEREIN.**

**bioMérieux, Inc.**

By: Ben W Andrews

Name: Ben W Andrews

Title: VP, US ClinOps Sales

Date: Nov 9, 2023

**San Bernardino County on behalf of Arrowhead Regional Medical Center**

By: Dawn Rowe

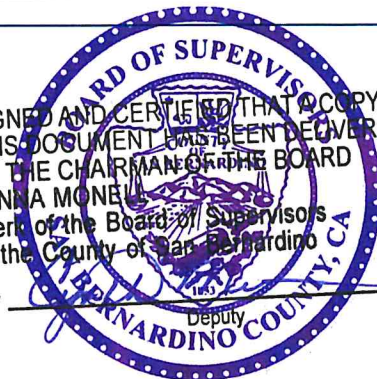
Name: Dawn Rowe

Title: Chair, Board of Supervisors

Date: DEC 05 2023

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD OF SUPERVISORS  
LYNNA MONEILL  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By: Deputy



# Sales Quote for Arrowhead Regional Medical Center

DATE: 3/29/2023 12:26 PM

**QUOTE: Q-47914**

Quote Expiration Date: 12/31/2023

## Prepared for:

<b>Ship To</b> Arrowhead Regional Medical Center 400 North Pepper Avenue Colton, California 92324- United States	<b>Bill To</b> Arrowhead Regional Medical Center 400 North Pepper Avenue Colton, California 92324- United States
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## bioMérieux

### Sales Representative:

Gordon MARSH gordon.marsh@biomerieux.com 2420
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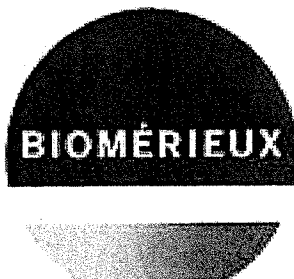
## Reagents

Qty	Unit	Description	Part #	List Unit Price	Disc. %	Sales Price	Total Price
85.00	Each	BIOFIRE RP2.1 PANEL, 30 TESTS IVD - 423742	423742	\$4,050.00	13.00	\$3,523.50	\$299,497.50
15.00	Each	FILMARRAY GI PANEL, 30 TESTS - RFIT-ASY-0116	RFIT-ASY-0116	\$4,650.00	2.50	\$4,533.75	\$68,006.25
15.00	Each	FILMARRAY ME PANEL, 30 TESTS - RFIT-ASY-0118	RFIT-ASY-0118	\$5,790.00	5.00	\$5,500.50	\$82,507.50
65.00	Each	BIOFIRE BCID2 PANEL, 30 TESTS - RFIT-ASY-0147	RFIT-ASY-0147	\$3,870.00	8.00	\$3,560.40	\$231,426.00

Reagents Total: \$681,437.25

Quote Total: \$681,437.25

Agreement Total: \$3,407,186.25



Reagent Purchase Agreement (RPA), 60 Months

Credit Card Orders Via:  
Phone: 800 735 6544 - ext. 502

Submit Purchase Orders Via:  
Email: SalesOrders@biofiredx.com  
or by Fax: 801 588 0507

515 Colorow Drive, Salt Lake City, Utah 84108, U.S.A.  
801 736 6354 local | 800 735 6544 toll-free | 801 588 0507 fax

www.biomerieux-usa.com

Customer agrees to purchase a minimum of 85 RP2.1 kit(s), 65 BCID2 kit(s), 15 GI kit(s), 15 ME kit(s) per year for a period of 5 Years. The pricing above reflects annual totals for this Agreement.

This quote (including any purchase order issued by Customer in response to this quote) is governed by the attached Agreement and bioMérieux's Extended Warranty Terms and Conditions for Instruments and Products available at <https://www.biomerieux-usa.com/biomerieux-terms-conditions>

Prices for reagents shall increase by 5% each year beginning on the first anniversary of the Effective Date and each anniversary thereafter. Price increases shall be effective for all new orders placed after the applicable anniversary. Seller is not guaranteeing the availability of any amount of the Products set forth herein and reserves the right, in its sole discretion to apportion supply of Products among its customers. Any provision(s) in this Agreement that conflicts with this provision, including but not limited to any guaranteed delivery times, supply representations, or damages for failure to supply shall not apply. Delivery dates set forth herein are requested delivery dates only. Seller shall deliver upon availability.



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## bioMérieux Terms & Conditions

### Exhibit B

#### **1. Definitions**

"Consumables" means those reagents or panels which are identified in the Sales Quote or which are otherwise ordered by Customer.

"Instrument" means an instrument or those instruments leased or purchased under this Agreement, which are identified in the Sales Quote or which are otherwise ordered by Customer.

"Kit" refers to a package of 30 panels of one type.

"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 or inserts affixed to or accompanying the Products, subject to any restrictions or limitations on usage set forth therein.

"Sales Quote" means the bioMérieux quote provided to the Customer and made a part of the Agreement between the Parties which identifies the Products.

"Seller" means bioMérieux, Inc., including its affiliated companies.

"Seller Software" means computer software, machine readable instructions or instruction sets developed by Seller and delivered with or installed, loaded, integrated, embedded, bundled, incorporated, or read into memory on any Instrument.

"Services" shall mean the maintenance or repair services described in the Sales Quote.

"Third Party Licenses" means the rights or licenses of Customer under contractual agreements between Customer and one or more third parties.

"Warranty" means the warranty described herein in Section 11.

Defined terms in the singular shall include reference to the plural and vice versa.

#### **2. Orders**

By placing an order, Customer agrees to these Terms. Seller's acceptance of a Sales Quote or an Order is established by the earlier of (a) Seller delivering written acknowledgement of acceptance to Customer, or (b) Seller delivering Products to the Delivery Point as set forth in Section 4, whichever occurs first. Any Customer purchase order documentation accepted or signed by Seller is solely for Customer's record keeping and shall not, notwithstanding the terms thereof, add to, modify, amend, supersede, or replace this Agreement in whole or in part. Customer may withdraw an Order or Sales Quote at any time before it is accepted by Seller; provided, however, that any order placed for Consumables will, subject to Section 11 ("Limited Warranty"), be non-cancellable and non-refundable.

#### **3. Term and Termination**

This Contract is effective as of December 5, 2023 and expires December 4T, 2028 but may be terminated earlier in accordance with provisions of this Agreement. Either party may terminate this Agreement at any time upon the insolvency of the other Party or in the event of the institution of any proceeding by or against the other party in bankruptcy or insolvency or under the provisions of the Bankruptcy Act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors of the other party. Either party may terminate this Agreement or any Sales Quote (i) for breach of the Agreement by the other party which is not cured within thirty (30) days following receipt of notice thereof, or (ii) as otherwise provided by the Terms. Without limitation, a breach of this Agreement includes but is not limited to, failing to make timely payments failing to purchase any minimum Consumable commitment, or failing to perform any Customer obligation under this Agreement.

Upon the occurrence of a default, Seller may (a) terminate the Agreement; (b) adjust the pricing available to Customer under the Agreement; and/or (c) accelerate, and declare as immediately due and payable, the outstanding balance of all payments due under the Agreement. The exercise of the foregoing remedies shall be without limitation to remedies available at law, in equity or under this Agreement as applicable, and Seller shall have the right to recover all reasonable and proximate damages suffered by reason of such default, including reasonable attorneys' fees. Upon termination of this Agreement, Customer shall return any Seller owned Instrument to Seller unless otherwise agreed in the Sales Quote.

#### **4. Shipping**

Unless Customer 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 Customer ("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. Customer 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





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## bioMérieux Terms & Conditions

will not be liable for any failure or delay in shipping. Seller reserves the right to ship Products freight collect and Seller shall exercise its own discretion with respect to the manner of shipment, packaging, and carrier. Customer shall be responsible for obtaining all necessary import or export licenses or permits for the Product(s). Seller will have the right, in its judgment, to apportion Products among its customers in such manner as Seller deems equitable.

Risk of loss or damage passes to Customer when Products are delivered to a carrier, at which point, Customer is responsible for all loss or damage to the Products. No loss or damage will relieve Customer 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, Customer 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 and Use of Products**

Acceptance of any Instruments requiring installation by Seller shall occur upon the earlier of (i) delivery of proof of installation by Seller to Customer, or (ii) use of the Instrument by Customer for clinical testing. Customer agrees to comply with all applicable laws and regulations when using, maintaining, or disposing of the Products. Customer acknowledges that Consumables and Instruments are specifically designed and manufactured to operate together. Customer agrees that it will only use Consumables with Instruments. Customer will store Consumables in accordance with Seller's storage and handling instructions (or, absent such instructions, in accordance with generally accepted industry customs and standards), including all temperature and climate control standards and other regulatory requirements.

Instruments may be returned for full credit within 5 calendar days of delivery, provided that Customer has not damaged the Instruments. Consumables may not be returned except in the event that Customer has a warranty claim. To make a claim for defective, damaged, or missing Products, Customer 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 Customer's sole and exclusive remedies for defective, damaged, or missing Product(s).

### **6. Price**

Customer will pay for Products no later than forty-five (45) days after the date of Seller's invoice, which will include all applicable taxes and shipping costs. If Customer is tax-exempt, Customer will provide Seller with certification of its status. Payments are deemed made by Customer when received by Seller. New customer Orders and Sales Quotes are subject to credit approval. Seller shall accept all payments from Customer via electronic funds transfer (EFT) directly deposited into Seller's designated checking or other bank account. Seller shall promptly comply with directions and accurately complete forms provided by Customer required to process EFT payments provided that such forms do not contain alter or add terms and conditions beyond what is listed in this Agreement. Seller reserves the right to reject or accept credit card payments on a case by case basis. Customer is not entitled to abate or reduce payments, or to withhold, discount, or offset any amounts or charges against the amounts due to Seller under this Agreement for any reason.

### **7. Software**

Any code or software incorporated into the Product which is not Seller Software ("Third Party Software"), is provided to Customer "as-is" or subject to the terms, if any, set forth in any "shrink-wrapped" license packed with the Products or "click-wrapped" license visually displayed upon installation or execution of the Software, or any other terms and conditions of use by the owner, developer, or manufacturer (the "End-User License Agreement"). Nothing in this Agreement is intended or shall be interpreted to grant to Customer any ownership of or title to the any Seller Software or Third Party Software (as used together "Software") and Customer shall not be permitted to use the source code of the Software. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, NOR SHALL SELLER HAVE ANY LIABILITY WITH RESPECT TO, ANY THIRD PARTY SOFTWARE OR THIRD PARTY LICENSES, AS DEFINED IN SECTION 1.

Upon acceptance of the Product, Customer accepts full responsibility to manage and maintain: (i) all critical operating system patches to minimize risk of exposure of the Product to cyber threats; and (ii) the latest Software updates, upon being provided with same by Seller or applicable third party.



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Customer will take all necessary measures in order to ensure technological and physical security of any Consumables, Instruments, and all Software. Seller shall not be responsible for any contamination of Instruments or Software by any virus and reserves the right to charge Customer for any measures taken by Seller to remedy such contamination.

Where applicable, Customer authorizes and grants permission to Seller to access the Instrument(s) through Seller's remote access tool required to provide remote technical support. Customer shall provide a secure Internet connection and any reasonably requested information required to implement Seller's remote access solution.

Customer acknowledges and agrees that Seller may extract, from time to time, operational data from Instruments in order to maximize the operation of Instruments. Operational data includes, but is not limited to, data that is collected for analytical, statistical, or benchmarking purposes and which does not permit the identification of individuals. Such operational data relates directly to the operation or performance of the Instruments and Seller has expended significant resources in enabling the gathering, assembly, compilation, and use of the data. Accordingly, notwithstanding Customer's use of the Instruments, the operational data and any resultant data generated or otherwise derived from the operational data shall be the exclusive property of the Seller.

### **8. Indemnification**

Seller will indemnify, defend, and hold harmless Customer from and against third party claims, demands, causes of action, or liability arising from a claim that Customer's use or possession of the Products infringes or misappropriates the patent, copyright, trade secret, or other intellectual property right of any third party except to the extent such claim arises in whole or in part from (i) the combination, operation, or use of the Product with products, services, deliverables, materials, technologies, business methods, or processes not furnished by Seller; (ii) modifications which were not made or approved by Seller; (iii) Customer's breach of this Agreement or use of the Product other than in accordance with its Permitted Uses; or (iv) Third Party Software or Third Party Licenses. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any intellectual property rights, Customer will use reasonable efforts to notify Seller promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve Seller of its obligations only if and to the extent that such delay or failure materially prejudices Seller's ability to defend such lawsuit or claim. Customer will give Seller sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that Seller may not settle the claim or suit absent the written consent of Customer unless such settlement: (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the Products that are the subject of the claim. In the event that Seller fails to or elects not to defend Customer against any claim for which Customer is entitled to indemnity by Seller as listed above, then Seller shall reimburse Customer for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Customer. After thirty (30) days, Customer will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by Customer to Seller Without in anyway affecting the indemnity herein provided and in addition thereto, Seller shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Attachment C, as attached hereto and incorporated herein.

### **9. Limitation of Liability**

NOTWITHSTANDING ANYTHING IN THE TERMS, CUSTOMER DOCUMENTATION, SALES QUOTE, MASTER AGREEMENT OR ANY ANCILLARY AGREEMENT (COLLECTIVELY THE "DOCUMENTS") TO THE CONTRARY, BIOMERIEUX'S CUMULATIVE LIABILITY TO CUSTOMER, OR ITS EMPLOYEES, AGENTS, CUSTOMERS, OR INVITEES, OR ANY THIRD PARTIES, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR RELATED TO, WITHOUT LIMITATION, THE DOCUMENTS, PRODUCTS, OR PRODUCT PERFORMANCE (EXCEPT AS EXPRESSLY STATED IN SECTION 11) SHALL BE EXPRESSLY LIMITED TO ONE MILLION DOLLARS (US\$1,000,000). NOTWITHSTANDING ANYTHING IN THE DOCUMENTS TO THE CONTRARY, NEITHER PARTY SHALL NOT BE LIABLE TO THE OTHER, OR ITS EMPLOYEES, AGENTS, CUSTOMERS, OR INVITEES, IN ANY INSTANCE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF GOODWILL OR OPPORTUNITY, OR ANY LOST PROFITS, LOSS OF ANY DATA OR USE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY MADE HEREIN. The limitations set forth in this section shall not apply with respect to: (i) injury to person and/or tangible property arising from the willful misconduct or



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gross negligence of Seller; (ii) fraud; (iii) to the extent such disclaimer is prohibited under applicable law; (iv) violations of law; or (v) Seller's indemnification obligations. Customer acknowledges and agrees Seller has entered into this Agreement in reliance upon the disclaimers of warranties and limitations of liability in the Terms and that the same form an essential basis of the bargain between the parties.

### 10. Export Controls

The Products, including hardware, software, services, and any related technology, provided to the Customer may be subject to applicable export control laws and regulations including, without limitation, the United States Export regulations. Customer agrees that Products will not be used, in their entirety or in part, directly or indirectly in support of activities, sectors and destinations restricted or prohibited by the United States, the European Union, or any other applicable jurisdiction, except as authorized under applicable laws and regulations. Products will only be used for clinical military use when authorized under applicable laws and regulations and with prior authorization of Seller. Products will not be used in activities relating to biological, chemical, or nuclear weapons or applications. Customer agrees that Products will not be used directly or indirectly, sold, re-exported or incorporated into products for the direct or indirect benefit of any person or entity named on any applicable government's denied or restricted party list.

### 11. Limited Warranty

A. Seller warrants the FilmArray Products in accordance with the following applicable warranties:

- i. BioFire Products and associated Consumables see Seller's Standard Limited Warranty available at [https://www.biomerieuxusa.com/sites/subsidiary\\_us/files/warranty\\_standard\\_0.pdf](https://www.biomerieuxusa.com/sites/subsidiary_us/files/warranty_standard_0.pdf)
- ii. BioFire Products and associated Consumables see Seller's Extended Warranty (if purchased) available at [https://www.biomerieuxusa.com/sites/subsidiary\\_us/files/warranty\\_extended\\_0.pdf](https://www.biomerieuxusa.com/sites/subsidiary_us/files/warranty_extended_0.pdf)

B. Seller warrants all other non BioFire products and associated Consumables in accordance with the following applicable warranties:

- i. Seller warrants the Instruments to the Customer for a period of one (1) year after Products are delivered to a carrier/shipper for delivery to Customer (the "Warranty Period") against defects in material and workmanship and failures to conform to Seller's specifications applicable on the date of shipment. Customer's sole and exclusive remedy for a breach of the above warranty is for Seller to either, at Seller's sole discretion, repair or replace, any defect confirmed by Seller to have occurred, under normal use and service, during the Warranty Period provided Seller is promptly notified in writing upon discovery of such defect.
- ii. Seller warrants that Consumables will conform with the specifications set forth in the applicable Product insert. Customer shall promptly notify Seller of any Consumables which are found to be in breach of the above warranty. Upon verification by Seller, Customer's sole and exclusive remedy for said nonconforming Consumables shall be for Seller to either replace or, alternatively, in Seller's sole discretion, issue a credit note equal to the purchase value of the defective Consumables.
- iii. Seller warrants that the Services to be performed hereunder shall conform to Seller's standards and that the parts supplied hereunder are warranted against defects in workmanship and material for a period of thirty (30) days) from the date of installation of such Instrument. Customer's sole and exclusive remedy for breach of the above warranty shall be for Seller to provide Customer with a repair or replacement for the part which is found to be defective due to a breach of the above warranty.
- iv. Upon notification, Seller will provide the following: (i) make commercially reasonable efforts to provide on-site engineering support within forty eight (48) hours of determination by Seller that an on-site visit is necessary, Monday-Friday, 8:00AM-5:00PM local time in the Continental U.S., excluding locally observed holidays; and (ii) remote applications and engineering support Monday-Friday, 8:00AM-5:00PM local time in the Continental U.S., excluding locally observed holidays (hereinafter the "Warranty Period Services"). In no event shall these Warranty Period Services include preventative maintenance service. Disposables and replacement items with a normal life expectancy of less than one (1) year such as batteries, lamps, bulbs, and card trays are excluded from this warranty. Seller shall not be liable under this warranty for any defect arising from abuse of the Instrument; failure to operate and maintain the Instrument in accordance with any Seller instruction or instruction manual; operation of the





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Instrument by a person who has not been trained in its operations by Seller's recommendations; or repair service, alteration, or modification of the Instrument by any person other than the authorized service representative of Seller. The Warranty is personal to the Customer and may not be transferred in whole or in part to any third party, including an affiliate of Customer. Only the Customer as defined in these Terms may enforce the Warranty. The Warranty is facility specific and does not transfer if the Product is moved to another facility, unless Seller conducts such move. Any description of the Products contained on Seller's website or promotional materials is for the sole purpose of identifying them, and any such description is not a part of the basis of the bargain and does not constitute a warranty that a Product shall conform to that description. No affirmation of fact or promise made by Seller, on its website or otherwise, shall constitute a warranty that the Products will conform to the affirmation or promise. Customer acknowledges and agrees Customer has not relied on any other statement, promise, representation, or warranty made by or on behalf of Seller which is not expressly set forth in the Terms.

**THE WARRANTIES AND REMEDIES SET FORTH AND INCORPORATED BY REFERENCE IN THIS SECTION 11 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES OF ANY NATURE WHATSOEVER. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER MAKES NO FURTHER, AND HEREBY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, ANY PRODUCT, REAGENT, INSTRUMENT, SOFTWARE, THIRD PARTY LICENSES, OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INTERFERENCE, LACK OF INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES, OR WHICH MAY ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, OR REGARDING THE COMPATIBILITY OR INTEROPERABILITY OF THE PRODUCT, INSTRUMENT, OR SOFTWARE WITH OTHER PERSONAL OR THIRD PARTY EQUIPMENT, LICENSES, DEVICES, PROPERTY, OR ACCESSORIES WHICH CUSTOMER USES WITH OR CONNECTS TO THE PRODUCTS.**

### **12. Additional Obligations of Customer**

Customer agrees not to send any electronic protected health information (PHI) to Seller. Further, in any event an Instrument is returned to Seller, Customer shall ensure it will return the Instrument to Seller purged of any and all electronic protected health information (PHI) in accordance with applicable laws and regulatory guidance and in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted. Customer is not an authorized dealer, representative, reseller, or distributor of any of Seller's Products. Customer represents and warrants that it (i) is not leasing or purchasing the Product on behalf of a third party, (ii) is not leasing or purchasing the Product in order to resell or distribute the Product to a third party, (iii) is not leasing or purchasing the Product in order to export the Product from the country in which Seller shipped the Product pursuant to the ship-to address designated by Customer at the time of ordering (the "Ship-To Country"), and (iv) will not export the Product out of the Ship-To Country. Customer shall promptly disclose to Seller any communication that it makes or receives from a government body, agency, or other regulatory or accrediting body pertaining to the Products or Customer's use thereof. Customer shall provide Seller with and shall assist Seller in obtaining any and all error and other information generated through use of the Products, as reasonably requested by Seller. Customer acknowledges and agrees that Seller shall have the right to use such information, provided that such use is in compliance with applicable laws and regulations.

### **13. Confidentiality**

This Agreement is subject to compliance with the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005) (collectively, "Regulations"). All information, including detailed price and cost information, is public information. If Seller believes that any portion of this Agreement (including any attachments, amendments, Order, or Sales Quote), materials, or work product provided to Customer is exempt from public disclosure, Seller must clearly mark that portion "Confidential" or "Proprietary". Seller also must include a brief description that identifies the recognized exemption from disclosure under the Regulations. Customer will use reasonable means to ensure that such information is safeguarded, but will not be held liable for inadvertent disclosure of the information. Information marked "Confidential" or "Proprietary" in its entirety will not be honored, and Customer will not deny public disclosure of any information so marked. Seller represents that it has a good faith belief that such portions are exempt from disclosure under the Regulations and agrees to reimburse Customer for, and to indemnify, defend, and hold harmless Customer, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to Customer's non-disclosure of



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## bioMérieux Terms & Conditions

any such information. If the receiving party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other party, it will, to the extent legally permissible, promptly notify the other party and if requested by the other party, tender to the other party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving party will then be entitled to comply with the request to the extent permitted by law.

### **14. Intellectual Property**

Many of the Products are covered by U.S. patents, patents pending, or their foreign counterparts, owned or licensed by Seller or affiliates, which may be viewed at [www.biomerieux-usa.com/patents](http://www.biomerieux-usa.com/patents). Products leased, purchased, and/or sold hereunder are leased or sold by Seller solely for Permitted Uses by Customer, subject to any restrictions on Permitted Uses. Depending on Customer's specific application(s), Customer may need one or more additional licenses or rights to use certain of the Products. Customer represents and warrants that it has, or will obtain, all necessary Third Party Licenses for its specific application(s). Notwithstanding anything to the contrary in this Agreement, nothing contained herein will be deemed, construed or interpreted as a grant, transfer or conveyance to Customer 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, copyrights or trademarks, or other intellectual property, other than the right to use the Products for Permitted Uses only. Customer shall not: (i) have any ongoing right to be supplied with, or to manufacture or to have manufactured, any quantities of Products or Third Party Software beyond those ordered in accordance with the terms and conditions of this Agreement; (ii) modify, copy, translate, enhance, reverse engineer, decompile, disassemble, create derivative works based upon, sublicense, resell, or convey in any manner any Product or Third Party Software or any component thereof to any third party anywhere in the world; or (iii) remove, modify, change, cover, or otherwise obscure from the Products any labels, trademarks, copyright, or other proprietary notices or legends. Any breach by Customer of this section shall entitle Seller to terminate this Agreement or any Sales Quote upon receipt of written notice to Customer.

### **15. Regulatory**

A. 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 shall comply with the reporting requirements of 42 C.F.R. § 1001.952(h), regarding "safe harbor" protection for discounts under the Medicare and Medicaid Fraud & Abuse law. Seller shall disclose to Customer on each invoice, or as otherwise agreed, the amount of the discount or rebate. The statement shall inform Customer, of the amount of the discount or rebate so as to enable Customer to satisfy its obligations to report such discount or rebate to the government. Seller and Customer represent that they have not been, nor are they about to be excluded from participation in the federal Medicare or Medicaid program, Maternal and Child Health Services Block Grant, Block Grants for Social Services, or State Children's Health Insurance (collectively, "Federal Health Care Programs") Each party agrees to notify the other promptly after receipt of final notice of exclusion from any Federal Health Care Program. To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") and the regulations promulgated thereunder are applicable to the Terms, and until the expiration of four (4) years after the last sale of the Products pursuant to the Terms, Seller shall make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of the Terms and any books, documents, records and other data of Seller that are necessary to verify the nature and extent of the costs incurred by Customer in purchasing such Products. If Seller carries out any of its duties under the Terms through a subcontract with a related organization involving a value or cost of ten thousand dollars (\$10,000) or more over a twelve-month period, Seller shall cause such subcontract to contain a clause to the effect that, until the expiration of four (4) years after the last sale of the Products pursuant to such contract, the related organization shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of such contract and any books, documents, records and other data of said related organization that are necessary to certify the nature and extent of costs incurred by Customer in purchasing such Products. Customer will be solely responsible for reporting applicable discounts on its Medicaid/Medicare cost reports.

B. Each party hereto will comply with all laws, rules and regulations, including without limitation, all applicable laws and regulations regarding the collection, use and storage of protected health information (as defined in 45 C.F.R. 160.103), including the Health Insurance Portability and Accountability Act of 1996, as amended by (a) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, (b) Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5), (c) the Affordable Care Act of 2010; (d)



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the federal regulations published at 45 C.F.R. parts 160 and 164, and (e) any applicable state privacy and security laws regarding individually identifiable health information as applicable to the agreeing party, which relate to this Agreement. C. IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), Seller certifies that at the time the Agreement is signed, Seller signing the Agreement is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Sellers are cautioned that making a false certification may subject the Seller to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

D. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Seller is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. Seller shall be provided advance written notice of such termination, allowing Seller at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of Customer.

E. Campaign Contribution Disclosure (SB 1439). Seller has disclosed to Customer using Attachment D - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County ("County") Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Seller's proposal to Customer, or (2) 12 months before the date this Agreement was approved by the County Board of Supervisors. Seller acknowledges that under Government Code section 84308, Seller is prohibited from making campaign contributions of more than \$250 to any member of the County Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Agreement. In the event of a proposed amendment to this Agreement, Seller will provide Customer a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the County Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of the Seller or by a parent, subsidiary or otherwise related business entity of Seller.

### **16. Force Majeure**

Seller is not responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to strike, war, fire, riot, accident, acts of God, hurricane, earthquake, severe weather, interruption of electrical supply to Customer's facilities, supplier-caused delays or shortages, pandemic, epidemic, or compliance with any law, regulation, embargo restrictions or order of any government body or instrumentality thereof. Performance shall be deemed suspended during said circumstances and extended for such time as said circumstances cause delay. Seller will have the right, in its judgment, to apportion Products among its customers in any manner Seller deems necessary in order to comply with its regulatory obligations or in the handling of any force majeure event which affects Seller's obligations to its customers.

### **17. Miscellaneous Provisions**

A. This Agreement may only be modified in a writing signed by authorized representatives of Customer and Seller which expressly states the intent to modify this Agreement.

B. This Agreement, may not be transferred or assigned by either party in whole or in part, to a third party, including an affiliate, without the prior written consent of the other party. Any attempted assignment or transfer shall be null, void, and invalid.

C. Each clause of this Agreement is distinct and severable. If any provision of this Agreement is declared unenforceable, the other provisions herein will remain in full force and effect.

D. A waiver or modification by either party of any condition or obligation of the other party hereunder shall not be construed as a waiver or modification of any other condition or obligation and no such waiver or modification granted on any one occasion shall be construed as applying to any other occasion.



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- E. Sections 1, 4, 7, 9, 10, 11, 13, 14, 15, and 17 of the Terms shall survive expiration or termination of the Agreement for whatever reason.
- F. This Agreement will be interpreted according to the laws of the State of Delaware 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.
- G. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under indemnification and insurance obligations.
- H. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

## ATTACHMENT C INSURANCE REQUIREMENTS

Seller agrees to provide insurance set forth in accordance with the requirements herein. If Seller uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Seller agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, Seller shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
  - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Seller and all risks to such persons under this contract. If Seller has no employees, it may certify or warrant to the Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
  - b. Commercial/General Liability Insurance – Seller shall carry General Liability Insurance covering all operations performed by or on behalf of Seller providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
    - i. Premises operations and mobile equipment.
    - ii. Products and completed operations.
    - iii. Broad form property damage (including completed operations).
    - iv. Personal injury.
    - v. Contractual liability.
    - vi. \$2,000,000 general aggregate limit.
  - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Seller is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Seller owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
  - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
  - e. Professional Liability –Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits  

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Agreement completion.

- f. **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Customer entities and cover breach response cost as well as regulatory fines and penalties.
2. **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Customer to vicarious liability but shall allow coverage for the Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. **Waiver of Subrogation Rights.** Seller shall require the carriers of required coverages to waive all rights of subrogation against the Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Seller and Seller's employees or agents from waiving the right of subrogation prior to a loss or claim. Seller hereby waives all rights of subrogation against the Customer.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Customer.
5. **Severability of Interests.** Seller agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Seller and the Customer or between the Customer and any other insured or additional insured under the policy.
6. **Proof of Coverage.** Seller shall furnish Certificates of Insurance to the Customer Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Seller shall maintain such insurance from the time Seller commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Seller shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. **Failure to Procure Coverage.** In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced,



the Customer has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary.

10. **Insurance Review.** Insurance requirements are subject to periodic review by the Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Customer. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Customer, inflation, or any other item reasonably related to the Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Seller agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Customer.



## ATTACHMENT D

### Campaign Contribution Disclosure (SB 1439)

#### **DEFINITIONS**

**Actively supporting the matter:** (a) Communicate directly, either in person or in writing, with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] with the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

**Agent:** A third-party individual or firm who is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

**Otherwise related entity:** An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

**Parent-Subsidiary Relationship:** A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Contractor: bioMerieux, Inc.

2. Name of Principal (i.e., CEO/President) of Contractor, if the individual actively supports the matter and has a financial interest in the decision:

N/A

3. Name of agent of Contractor:

Company Name	Agent(s)
N/A	N/A

4. Name of any known lobbyist(s) who actively supports or opposes this matter:

Company Name	Contact
N/A	N/A

5. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):
N/A	N/A	N/A

6. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐

No ☒

7. Name of any known individuals/companies who are not listed in Questions 1-5, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	N/A

8. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer on or after January 1, 2023, by any of the individuals or entities listed in Question Nos. 1-7?

No ☒ If no, please skip Question No. 9.

Yes ☐ If yes, please continue to complete this form.

9. Name of Board of Supervisor Member or other County elected officer: N/A


Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members/County elected officer to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-7 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.

Signature: 

Email: gordon.marsh@biomerieux.com

Signature: Ben W Andrews  
Ben W Andrews (Nov 10, 2023 08:22 PST)

Email: gordon.marsh@biomerieux.com