

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

346



FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
March 13, 2012

SUBJECT: Approval of Sole Source Agreement with Alere North America, Inc.

RECOMMENDED MOTION: : Move that the Board of Supervisors:

- 1) Authorize the Chairman of the Board to ratify the Sole Source Procurement of Troponin Cardiac Marker reagent cartridges from Alere North America, Inc. for the period of January 1, 2012 through December 31, 2012, with the option to renew each year continuing through December 31, 2014
- 3) Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise renewal options, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement up to ten percent the maximum contract amount.

(cont. on Page 2)

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$163,435	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost FY:	\$ 0	For Fiscal Year:	11/12

SOURCE OF FUNDS: Enterprise Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

Purchasing: *Mark Seller*
 Mark Seller, Assistant Director
 Departmental Concurrence
 Dept't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: _____ **District:** A11 **Agenda Number:** _____

3.36

FORM APPROVED COUNTY COUNSEL
 BY: *Neal R. Kipnis*
 NEAL R. KIPNIS
 DATE: _____

SUBJECT: Approval of Sole Source Agreement with Alere North America, Inc.

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BACKGROUND:

Troponin is a complex of three regulatory proteins that is necessary for smooth muscle contraction of the heart. Troponin levels are measured in the blood to differentiate between unstable angina and myocardial infarction (heart attack) in patients experiencing chest pain who are entering the emergency department at RCRMC.

RCRMC currently owns three Alere Triage Cardiac System Monitors to ensure patient safety. These monitors require the use of Troponin test reagent cartridges to measure the level of Troponin to assess patients at risk for acute myocardial infarction.

PRICE REASONABLENESS:

Alere North America Inc. certifies that the price offered of \$5.83 per test (\$17.50 per three tests) panel is the lowest or equal to those offered to any of its customers in California. There is no cost for the triage system equipment that RCRMC currently owns. Market research of a comparable test system, the Abbott I-Stat Troponin test was priced at \$11.45 per test, plus \$25,350 for three I-Stat analyzers and \$12,580 for Technology License costs associated with software and hardware maintenance.

Total cost of the Alere Triage system based on projected test volume is \$163,435.

FINANCIAL IMPACT:

Hospital Enterprise Funds

REVIEW/APPROVAL:

County Purchasing

DB:rs

Date: March 13, 2012
From: Douglas D. Bagley, Hospital Director, Riverside County Regional Medical Center
To: Board of Supervisors
Via: Purchasing Agent
Subject: Sole Source Procurement; Request for Troponin Cardiac Marker used for patient testing

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Reagent cartridges for Alere Triage meters used for rapid Troponin testing of patients at risk for acute myocardial infarction.
2. **Supplier being requested:** Alere North America Inc. Vendor # 91243
3. **Alternative suppliers that can or might be able to provide supply/service:** Alere North America Inc. is the sole proprietary manufacturer and domestic distributor of the Alere Triage Cardiac Test.
4. **Extent of market search conducted:** Internet- The Alere Triage[®] System is a leading rapid diagnostic test system comprised of a meter and various test devices that improve a physician's ability to aid in the diagnosis of critical diseases and health conditions including heart failure and myocardial infarction. Alere Triage[®] brand rapid tests include quantitative troponin I, CK-MB , myoglobin and are currently used in approximately 70 percent of U.S. hospitals and is available in more than 50 international markets.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** RCRMC currently owns three Alere Triage cardiac system meters that are ready for use in the Emergency Department but require the acquisition of test cartridges exclusively manufactured and distributed by Alere North America Inc. for testing with the meters.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** The current standard of care for cardiac patients indicates that use of rapid cardiac testing in the Emergency Department resulted in the following benefits.
 - Provides meaningful diagnostic information to differentiate acute myocardial infarction (AMI) from other cardiac abnormalities
 - Has a near perfect negative predictive value (99.9%) that allows for rapid AMI rule out
 - Has the potential to decrease Emergency Department Length of Stay (LOS) and turnaround time (TAT). Center for Medicare and Medicaid Services (CMS) mandate a TAT of less than 60 minutes from patient arrival in the Emergency Room.
 - Has the potential to decrease unnecessary admissions
 - Can improve clinical, economic and operational outcomes by reduction in AMI associated costs.

7. Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier: Alere North America Inc. certifies that the price offered of \$ 5.83 per test (\$17.50 per three test) panel is the lowest or equal to those offered to any of its customers in California. There is no cost for the Triage system equipment. Market research of a comparable test system, the Abbott I-Stat Troponin test was priced at \$11.45 per test, plus \$ 25,350 for three I-Stat analyzers and \$12,580 for Technology License costs associated with software and hardware maintenance.
Total cost of the Alere Triage system based on projected test volume= \$ 163,435.

8. Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain). The county is not obligated to future similar contractual arrangements. Future purchases are subject to annual renewal by an authorized county Purchasing Agent.

9. Period of Performance: January 1, 2012 – December 31, 2014 renewable in one year increments

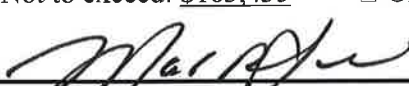


Department Head Signature 3/13/12
Date

Purchasing Department Comments:

Approve Approve with Condition/s Disapprove

Not to exceed: \$163,435 One time Annual Amount through December 31, 2014



Purchasing Agent 3-15-12
Date 12-443
Approval Number
(Reference on Purchasing Documents)



Amerinet Options Agreement

Note: This Addendum is the form to be used if there will be Options pricing with this Supplier for one or more Participating Institutions.

Supplier: Alere North America, Inc.

Date: December 22, 2011

Options Agreement Number: VL10061

Product Category: Triage Supplies

This Amerinet Options Agreement ("Options Agreement") is made and entered into as of the 22nd day of December, 2011 and constitutes an amendment to the Group Purchasing Agreement ("GPA"), VL01900 between Amerinet, Inc. and Alere North America, Inc. ["Supplier"] on behalf of Riverside County Purchasing and Fleet Services ("Eligible Participating Institutions" defined in Paragraph 2 below).

1. **Options Pricing.** Notwithstanding Paragraph 6 – Supply and Pricing of the GPA, Supplier agrees to provide the Products to the Eligible Participating Institutions for the contracted Amerinet Options prices set forth in Exhibit A hereto and pursuant to the terms of this Options Agreement. Supplier agrees that the prices set forth in Exhibit A shall be comparable to similarly situated hospitals ("Hospitals") purchasing under similar terms and conditions, including but not limited to duration of term, total volume of Reagents purchased, percent % participation by members, and product exclusivity. This Paragraph 1 shall not preclude Supplier from offering more favorable terms and pricing to any other Eligible Participating Institutions in the form of an Amerinet Options Agreement, an Elite agreement, an Elite Preferred agreement or an individual agreement negotiated for a Participating Institution in direct response to a demonstrated market condition. If the prices offered by Supplier under the GPA or by any other purchaser (other than pursuant to an Amerinet Options Agreement, an Elite agreement, an Elite Preferred agreement or an individual agreement negotiated for a Participating Institution in direct response to a demonstrated market condition) are not comparable for similarly situated Hospitals than the prices set forth in Exhibit A hereto, Supplier shall adjust the prices for the Eligible Participating Institutions to the more favorable prices immediately and Exhibit A shall be deemed amended to include the more favorable prices effective immediately.

2. **Eligible Participating Institutions.** Attached to this Options Agreement as Exhibit B is a list of those Participating Institutions which are willing to make the purchasing commitment in order to receive the special Amerinet Options pricing from Supplier ("Eligible Participating Institutions"). Only the Eligible Participating Institutions shall have the right to make purchases from Supplier pursuant to the terms and

conditions of the Amerinet Options arrangement, provided that Amerinet may amend and update Exhibit B at any time by providing Supplier with reasonable additions or deletions to the list of Eligible Participating Institutions.

3. **Administrative Fees.** Notwithstanding Paragraph 25 – Agreement Administrative Fee of the GPA, the Contract Administrative Fee to be paid by Supplier to Amerinet with respect to the purchases made by the Eligible Participating Institutions pursuant to this Options Agreement shall be three percent (3%) of net Sales realized from the purchases of the Eligible Participating Institutions, less credits, returns, taxes and shipping.

4. **Contract Number.** For information and reporting purposes, the arrangement pursuant to which the Eligible Participating Institutions make purchases from the Supplier under this Options Agreement shall be referred to as Options Agreement Number VL10061.

6. **Term.** The term of this Options Agreement shall begin as of December 22, 2011 and shall continue thereafter through December 22, 2014, unless otherwise terminated pursuant to the provisions of this Options Agreement or the GPA, with the reserved right to extend the agreement without other change for each of two one-year terms upon expiration of the then-current term.

7. **Pricing Protection.** Prices shall be firm for the entire term of this Options Agreement.

8. **Amendments to GPA.** During the duration of this Options Agreement, if Supplier reaches an agreement to amend GPA referenced herein, Supplier shall notify the applicable Amerinet Director, Custom Contracting Solutions of any such changes (pricing, terms and conditions, etc.) by providing sixty (60) days prior written notice.

9. **Effect of Amendment.** Except to the extent specifically set forth in this Options Agreement, the GPA, as amended by this Options Agreement, shall continue in full force and effect in accordance with its terms, including, without limitation, the requirements set forth in Paragraphs 24 – Agreement Activity Report and 25 – Agreement Administrative Fee of the GPA. In the event of any actual or perceived inconsistencies or conflicts between this Options Agreement and the GPA, the provisions of this Options Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date signed by Amerinet's authorized representative.

Supplier Information: Alere North America, Inc
Address: 9975 Summers Ridge Road
San Diego, CA 92121
Attention: Contract Administration Department

Registered Agent: same as above
Address: _____

Authorized Representative:
By: _____
Printed Name Jim Post
Title: President
Date: _____

Authorized Representative:
By: _____
Printed Name Doug Shaffer
Title: Vice President - Treasury
Date: _____

Amerinet Information: Amerinet, Inc.
Address: 2060 Craigshire Road
P.O. Box 46930
St. Louis, MO 63146

Authorized Representative:
By: _____
Printed Name: Kim Christian
Title: Sr. Director, Custom Contracting Solutions
Date: _____

Supplier/Internal Contract #: _____
Amerinet Contract #: VL10061

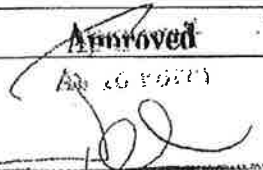
Approved
Aug 16 2011

Legal Department

Exhibit A

Triage Cardiac 97000HS

Average Monthly Reagent Purchases		Net Reagent Price	Net Reagent Kit Price
700	825	\$18.50	\$462.50
826	950	\$18.00	\$450.00
951	and up	\$17.50	\$437.50

Supplier shall review the Member's purchases during each calendar year ("Annual Review") and adjust the Reagent net pricing, moving forward, in accordance with the tiers set forth above. During each Annual Review, the Members agree to purchase, in the aggregate and on average, a minimum of seven – hundred (700) Reagents per month.

Exhibit B				
Member	Address 1	City	State	Zip
Riverside County Purchasing And Fleet Services	26520 Cactus Avenue	Moreno Valley	CA	92555
Riverside County Community Health Agency	4065 County Circle Drive, Floor 1	Riverside	CA	92503-3410

Vendor # 91243
Alere North America Inc.



Pivotal #: P92154
SAP #: _____
Distributor: SSC

Reagent Agreement/Reagent Rental Agreement

This Reagent Agreement/Reagent Rental Agreement ("Agreement") is entered into between Alere North America, Inc., a Delaware corporation ("Alere"), having a place of business at 30 South Keller Road, Orlando, Florida 32810 ("Notice Address"), and the customer set forth below ("Customer") upon the Effective Date.

<p>Customer ("Notice Address"):</p> <p>Name: <u>Riverside County Regional Medical Center</u></p> <p>Address: <u>26520 Caclus Avenue</u></p> <p><u>Moreno Valley</u> <u>CA</u> <u>92555</u></p>	<p>Contact Information:</p> <p>Contact: <u>Don Johnson</u></p> <p>Email: <u>DrJohnson@co.riverside.ca.us</u></p> <p>Phone: <u>951-486-5259</u> Fax: _____</p>
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Check here if Bill To and/or Ship To Information is different than Notice Address.
*Please provide this information on page three (3).

1. TERM ("Term") commences on the Effective Date and continues thereafter for: 3 YEARS Equipment Location: Laboratory

2. PURCHASE COMMITMENT

Alere shall sell, and the Customer shall purchase, the reagent products ("Reagents") at the prices and monthly purchase commitment set forth below. Within sixty (60) days from each six (6) month calendar period during the Term ("Semi-Annual Review"), Alere shall review Customer's aggregate reagent purchases ("Reagents") to determine if Customer has met their Monthly Reagent purchase obligation ("Monthly Purchase Obligation"). If Customer's monthly Reagent purchases, on average, in the preceding Semi-Annual Review period is less than their Monthly Purchase Obligation, then Alere shall provide written notice and Customer shall have forty-five (45) days ("Cure Period") from receipt to meet their Monthly Purchase Obligation. If Customer fails to cure the Monthly Purchase Obligation or any other purchase breach during the Cure Period, then Customer shall pay to Alere, at Alere's discretion, either (i) the aggregate difference between the discounts provided for the Reagents previously purchased during the Term and the list price referenced herein for such Reagents, or (ii) liquidated damages equal to seventy five percent (75%) of the Monthly Purchase Obligation multiplied by the number of months remaining during the Term following the uncured breach.

Catalog # / Reagents	List Test Price	Net Test Price	List Kit Price	Net Kit Price	Monthly Tests	Monthly Purchase Obligation
a. 97000HS Triage® Cardiac	\$ 29.00	\$ 18.50	\$ 725.00	\$ 462.50	843	\$ 15,595.50
b.						\$ -
c.						\$ -
d.						\$ -
e.						\$ -
f.						\$ -
g.						\$ -
					843	\$ 15,595.50
					<small>tests</small>	<small>amount due</small>

3. TOTAL REQUIREMENTS
Customer shall purchase applicable Reagents to satisfy its total requirements for: cardiac marker testing.

4. RENTAL EQUIPMENT - Please mark the desired option. If neither option is selected, then this section shall not apply.

A. Reagent Rental - Extended Net Monthly Rental Fee is included in Reagent pricing

B. Rental Equipment - Net Monthly Rental Fee

If Customer selects the Reagent Rental option and Customer fulfills its purchase obligations, then the extended net monthly rental equipment fee due ("Extended Net Monthly Rental Fee") shall be incorporated into the net test price. If Customer fails to meet its purchase obligations during this Agreement, and does not cure a purchase obligation breach within the Cure Period, then Customer shall pay the net monthly rental fee ("Net Monthly Rental Fee") for the Rental Equipment for the remaining Term following the purchase obligation breach. If Customer selects the Rental Equipment option, then Customer will be billed a Net Monthly Rental Fee (and Customer shall pay) on each monthly invoice during the Term.

Catalog # / Rental Equipment	List Monthly Rental Fee	Net Monthly Rental Fee	Quantity	Term (months)	Extended Net Monthly Rental Fee
a.					\$ -
b.					\$ -
c.					\$ -
d.					\$ -
e.					\$ -
Total Value for government reporting purposes:					\$ -

Each party signing below represents that (i) they are an authorized representative and have the authority to bind their respective party; and (ii) this Agreement shall become effective as upon the date that Alere signs below (the "Effective Date").

<p>Alere North America, Inc.</p> <p>By: _____</p> <p style="text-align: center;"><small>Sign</small></p> <p>_____</p> <p style="text-align: center;"><small>Name and Title</small></p> <p>By: _____</p> <p style="text-align: center;"><small>Sign</small></p> <p>_____</p> <p style="text-align: center;"><small>Name and Title</small></p> <p>_____</p> <p style="text-align: center;"><small>Effective Date</small></p>	<p>Customer: <u>Riverside County Regional Medical Center</u></p> <p>By: _____</p> <p style="text-align: center;"><small>Sign</small></p> <p>_____</p> <p style="text-align: center;"><small>Name and Title</small></p> <p>_____</p> <p style="text-align: center;"><small>Tax ID Number</small></p> <p><input type="checkbox"/> Tax-Exempt Status Tax Exempt Cert # _____</p> <p><input type="checkbox"/> For-Profit Status</p>
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FORM APPROVED COUNTY COUNSEL

BY: Neal R. Kipnis DATE _____

GENERAL TERMS AND CONDITIONS

As used in this Agreement, "Reagents" shall mean any reagent products that are purchased by Customer from Alere, and "Rental Equipment" shall mean any equipment based products and connectivity products rented by Customer from Alere. Reagents and Rental Equipment shall, collectively, be defined as "Products". "POC Testing" shall mean any testing performed outside of Customer's central laboratory using Products purchased from Alere under this Agreement. "Equipment" shall mean equipment rented or purchased by Customer from Alere.

1. **Products.** All Products are subject to Alere's standard specifications, which may be modified by Alere provided that such modification does not materially affect the function or performance of Products. Customer represents that any Products either purchased or rented under this Agreement shall be (i) used for its "own use" and not for resale purposes, in accordance with applicable law; and (ii) used exclusively in the United States or any territory of the United States.
2. **Ordering; Shipping.** Customer may purchase Products by submitting a valid purchase order. Customer shall pay all Alere invoices in full net thirty (30) days. Late fees shall be assessed upon Customer after thirty (30) days at a rate of 1.5% of the unpaid amount due, per month on a pro-rata basis. Except for income taxes, Customer shall pay any applicable sales, use, excise, property or any other taxes levied by a proper taxing authority relating to this Agreement. Shipping charges are not included in the Product price and Alere will pre-pay shipping costs and add those costs to an invoice as a separate line item. Alere will exercise discretion with respect to the mode of transportation, carrier, packaging and insurance. Alere will ship Products FOB Origin with the risk of loss passing to Customer upon tender by Alere of the Product to the carrier. Alere reserves the right to ship partial shipments and shipment is subject to approval by their credit department. If Customer is claiming tax exempt status, then Customer agrees to promptly provide tax exemption certificates or other supporting documentation prior to purchasing Products. If Customer elects to make payment via credit card, then Alere reserves the right to assess a reasonable processing fee for such payment as a separate line item on an invoice.
3. **Product Returns and Acceptance.** Customer shall promptly provide written notice to Alere for (i) any discrepancies between the type or quantity of Products ordered and Products delivered; or (ii) any Products delivered which do not conform to the warranty specifications as referenced in the Limited Warranty section below. Customer's failure to provide written notice within ten (10) days from receipt of delivery of the Products shall be deemed to waive their rights of return to such Products, subject to the Warranty provision referenced below.
4. **Rental Equipment.** Customer shall use Rental Equipment only (i) at the Customer's "ship to" address (unless Alere consents to moving the Rental Equipment to another location); (ii) for Customer's internal business purposes; (iii) in the manner described in the Product Manual; and (iv) in accordance with applicable laws and regulations. Customer shall not modify or deface Rental Equipment and shall not use any third party software on Rental Equipment. Customer shall promptly package and return Rental Equipment to Alere at the expiration or termination of this Agreement at its expense. Customer acknowledges that Alere retains title to Rental Equipment during and at expiration or termination of this Agreement. If this Agreement is construed to be a capital lease instead of a true rental agreement, then this Agreement shall be deemed a security agreement with Alere retaining a security interest in the Rental Equipment and any substitutions, replacements, and proceeds thereof (including insurance proceeds) to secure all obligations under this Agreement. Customer shall, at its expense, retain insurance coverage for Rental Equipment during the Term and, if applicable, any extension Term. If this Agreement includes a Beckman Equipment Addendum ("Beckman Addendum"), then the parties acknowledge that for purposes of this Agreement that Beckman Equipment shall be considered "Rental Equipment", and that all the terms and conditions in the Agreement associated with Rental Equipment shall apply to such Beckman Equipment, unless explicitly stated otherwise in the Beckman Addendum.
5. **Product Service and Training.** At Customer request, Alere shall provide reasonable on-site Customer training for Rental Equipment implementation and for use of Products. Should Customer require technical support for Products, Customer may contact Alere technical customer service support seven (7) days per week, twenty four (24) hours per day to address customer support issues. Customer shall not unreasonably restrict access to any Customer facility during normal working business hours or charge Alere a fee to access a Customer facility, including but not limited to requiring Alere to enter into an agreement or arrangement with a third party credentialing service to obtain access.
6. **Implementation Activities.** Customer shall dedicate sufficient resources and personnel, including appointing a point person to manage the implementation on behalf of the Customer and who retains decision making authority, to work cooperatively with Alere with respect to all implementation activities. Customer shall use best efforts in meeting all the completion dates set forth in an Implementation Addendum, if applicable. Upon completion of all the implementation activities, Customer shall promptly sign an Equipment confirmation form, as attached and incorporated hereto.
7. **Mutual Indemnification.** Both parties agree to defend, indemnify and hold harmless ("Indemnitor") the other party and its agents ("Indemnitee") against any claims for third party damages, losses, liabilities, costs and reasonable expenses (collectively "Damages") incurred by the Indemnitee to the extent such Damages were caused by (i) the negligent conduct of the Indemnitor in performance of any obligation of the Agreement; or (ii) a breach of this Agreement by Indemnitor. For the sake of clarity, any limitation of liability within this Agreement shall not apply to any third party indemnification claims.
8. **Limited Warranty.** FOR THE APPLICABLE WARRANTY PERIOD, ALERE WARRANTS THAT EACH PRODUCT SHALL BE (i) OF GOOD QUALITY AND FREE OF MATERIAL DEFECTS, (ii) FUNCTION IN ACCORDANCE WITH THE MATERIAL SPECIFICATIONS REFERENCED IN THE PRODUCT MANUAL, AND (iii) APPROVED BY THE PROPER GOVERNMENTAL AGENCIES REQUIRED FOR THE SALE OF PRODUCTS FOR THEIR INTENDED USE (collectively the "LIMITED WARRANTY"). IF THE PRODUCT FAILS TO MEET THE REQUIREMENTS OF THE LIMITED WARRANTY, THEN AS CUSTOMER'S SOLE REMEDY, ALERE SHALL EITHER REPAIR OR REPLACE, AT ALERE'S REASONABLE DISCRETION, THE PRODUCT. EXCEPT FOR THE LIMITED WARRANTY STATED IN THIS SECTION, ALERE DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT REGARDING THE PRODUCT. ALERE'S MAXIMUM LIABILITY WITH ANY CUSTOMER CLAIM ARISING FROM THIS AGREEMENT SHALL NOT EXCEED THE NET PRODUCT PRICE PAID BY CUSTOMER. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, PROFITS, DATA OR REVENUE, EVEN IF A PARTY RECEIVES NOTICE IN ADVANCE THAT THESE KINDS OF DAMAGES MIGHT RESULT. The Limited Warranty above shall not apply if the Customer has subjected the Product to physical abuse, misuse, abnormal use, use inconsistent with the Product Manual or Insert, fraud, tampering, unusual physical stress, negligence or accidents. Any warranty claim by Customer pursuant to the Limited Warranty shall be made in writing and submitted to Alere within the applicable warranty period. The Limited Warranty for Rental Equipment shall commence upon Customer receipt and continue thereafter for one (1) year.
9. **Indexed Annual Increases.** Alere may by notice increase the Product prices once per calendar year, based upon the CPI for healthcare services as reported by the U.S. Department of Labor.
10. **Miscellaneous.** Any notice between the parties shall be in writing and shall be deemed given only if delivered personally, by registered or certified mail, return receipt requested, or by overnight delivery to the applicable Notice Address set forth in this Agreement. Notices shall be deemed effective upon actual receipt. Either party may assign this Agreement in connection with the transfer or sale of a majority of its assets or stock from a merger, consolidation, or change of control. All other assignments are prohibited without the express written consent of the other party, which shall not be unreasonably withheld by either party. This Agreement shall be governed by the laws of the state identified in the Customer's notice address, without regard to any conflicts of law provision. The non-prevailing party in any claim arising from this Agreement shall pay the prevailing party reasonable attorneys fee and expenses incurred in such claim. No right created under this Agreement shall be waived unless expressly waived in writing and signed by the party possessing such right. Alere will make reasonable efforts to fill Customer orders, but is not liable for non-performance or delays caused by the shortage of raw materials, manufacturing, delivery or labor problems, acts of regulatory agencies, discontinuation of a product line, war, acts of terrorism, acts of God or other causes beyond Alere's reasonable control ("Force Majeure Event"). Alere may, in its sole discretion, allocate Products amongst its customers without liability resulting from a Force Majeure Event. Alere's obligation under this Agreement may be delayed to the extent such delay is caused by a Force Majeure Event, and for the duration the Force Majeure Event is effective. If any law or court of competent jurisdiction makes any provision of the Agreement illegal, invalid or unenforceable, then the remaining terms and conditions shall remain in effect. Except to comply with the law, Customer shall not disclose the terms or conditions of this Agreement to any third party without Alere's prior written consent.
11. **Exclusion from Federal Health Care Programs.** Alere and Customer both represent that they have not been excluded from any federally-funded health care program ("Excluded"), including Medicare and Medicaid (each, a "Program"). If either party is Excluded from any Program during this Agreement, then this Agreement shall immediately terminate upon the effective date of such Exclusion.
12. **Discounts.** Customer agrees to properly disclose and appropriately reflect discounts or reductions in price associated with Products referenced in this Agreement in costs claimed or charges made by Customer under Medicare, Medicaid, or federal or state health care programs requiring such disclosure or reporting. Social Security Act, Section 1128(b)(3), 42 U.S.C. section 1320a-7b(b)(2)(A). Customer shall notify Alere in writing if Customer requires additional reporting information.
13. **Compliance with Laws.** Each party shall comply with applicable state and federal laws in the performance of this Agreement, including compliance with their respective obligations imposed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Each party shall bear the cost of performing their respective obligations due under this Agreement.
14. **Entire Agreement.** This Agreement, including any addenda or exhibits, contains the entire understanding with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements, proposals, and representations made between the parties. No changes to this Agreement shall be made or be binding upon either party unless made in writing and signed by both parties. No term or condition of a Customer purchase order shall be incorporated into the Agreement, except to the extent necessary to clarify the type or quantity of Products that are purchased or rented.
15. **Term Extension.** This Agreement shall automatically renew for additional one (1) year extension(s), unless a party provides written non-renewal notice to the other party at least ninety (90) days prior to the expiration of the Term or any extension Term.
16. **Grant of Limited Software License.** Alere grants Customer a limited, non-exclusive, non-transferable license to use software during the Term. Customer shall (i) use software only as an integrated part of a Product and shall not separate integrated software from any Product; (ii) not translate, disassemble, decompile, reverse engineer, alter or modify the software; (iii) not make any copies of the software except one (1) copy for back-up purposes; and (iv) use software only for during the Term. The software is owned or licensed by Alere and is protected by copyright and other laws. Customer shall not sell, assign, sublicense, transfer or disclose or permit access to the software to a third party.
17. **Access to Records.** For up to four (4) years after an Agreement expires, Alere shall make available, upon written request of the Secretary of the Department of Health and Human Services ("Secretary"), or upon request of the Comptroller General of the United States ("Comptroller"), or any of their duly authorized representatives (collectively, the "Requesting Party"), the Agreement and any books, documents, and records necessary to certify the nature and extent of the costs paid by Customer to Alere pursuant to the Agreement ("Access"). If Alere delegates and pays a subcontractor more than \$10,000 over a twelve (12) month period to perform services under this Agreement, then Alere shall obligate the subcontractor to permit Access to the Requesting Party.

18. Independent Contractor Relationship. The relationship between Alere and Customer shall be construed as an independent contractor, and nothing in this Agreement is intended to, or shall be construed to, create a partnership, agency, joint venture, employment or similar relationship.

19. Contracted Services. If Customer requests assistance from Alere in completing performance verification protocols for Equipment in a Customer facility ("Performance Verification") with manufacturer specifications as required under CLIA quality system regulations, then Customer acknowledges that such delegation of responsibility shall be in writing and signed and dated by the Customer's laboratory director overseeing such Performance Verification. Customer's laboratory director shall review, validate and approve the Performance Verification results before using the Products to report patient test results.

CUSTOMER'S LABORATORY DIRECTOR SHALL ENSURE THAT THOSE RESPONSIBILITIES AND ACTIVITIES DELEGATED TO ALERE UNDER THIS AGREEMENT ARE DELEGATED LAWFULLY UNDER RELEVANT STATE AND FEDERAL LAWS AND REGULATIONS. IF COMPLIANCE OR LIABILITY ISSUES ARISE RELATED TO ANY DELEGATED SCOPE OF WORK, THE CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS ALERE FOR THE WORK PERFORMED BY ALERE'S EMPLOYEES OR AGENTS.

Catalog # / Controls and Cal Vers	List Kit Price	Net Kit Price
98013XR BNP Unit Dose Lvl 1 Ctrls	\$ 100.00	\$ 100.00
98014XR BNP Unit Dose Lvl 2 Ctrls	\$ 100.00	\$ 100.00
98015XR BNP Unit Dose Cal Ver Set	\$ 80.00	\$ 80.00
98201 BNP Controls for Beckman Systems	\$ 100.00	\$ 100.00
98202 BNP Cal Vers for Beckman Systems	\$ 80.00	\$ 80.00
88753 Total Control 5, Lvl 1	\$ 125.00	\$ 125.00
88754 Total Control 5, Lvl 2	\$ 125.00	\$ 125.00
88755 Total Cal Vers 5	\$ 80.00	\$ 80.00
94413 Triage® TOX Level 1 Controls	\$ 100.00	\$ 100.00
94414 Triage® TOX Level 2 Controls	\$ 100.00	\$ 100.00
52074 Liquid Drug Ctrl Lvl 1	\$ 80.00	\$ 80.00
52075 Liquid Drug Ctrl Lvl 2	\$ 120.00	\$ 120.00
52076 Liquid Drug Ctrl Lvl 3	\$ 120.00	\$ 120.00
88000 iScreen Drug Liquid Control, Negative	\$ 8.00	\$ 8.00
88001 iScreen Drug Liquid Control, High Positive	\$ 14.00	\$ 14.00
CC-0007-00-00 Eurotrol BGEM Level 1 Control	\$ 57.00	\$ 57.00
CC-0008-00-00 Eurotrol BGEM Level 2 Control	\$ 57.00	\$ 57.00
CC-0009-00-00 Eurotrol BGEM Level 3 Control	\$ 57.00	\$ 57.00
CC-0010-00-00 Calibration Verification Set, BGEM, Eurotrol	\$ 125.00	\$ 125.00
CC-0011-00-00 Eurotrol epoc Hematocrit Control Level A	\$ 57.00	\$ 57.00
CC-0012-00-00 Eurotrol epoc Hematocrit Control Level B	\$ 57.00	\$ 57.00
CC-0014-00-00 Eurotrol epoc Hematocrit Control Level C	\$ 57.00	\$ 57.00
CC-0013-00-00 Calibration Verification Set, Hematocrit, Eurotrol	\$ 125.00	\$ 125.00

Customer ("Billing Information"):

Name: _____
 Address: _____

 Accounts Payable
 Contact: _____
 Email: _____
 Phone: _____ Fax: _____

Customer ("Shipping Information"):

Name: _____
 Address: _____

 Contact: _____
 Email: _____
 Phone: _____ Fax: _____

For contract processing purposes, please forward all contracts through the following methods:

Via Fax: 858.695.2483 Via PDF or scanned copy: Jason.Cox@alere.com, MelissaAnn.Salvador@alere.com or Francesco.Mangiapane@Alere.com
 Via Regular Mail or Fed Ex:

Alere North America, Inc.
 Contract Administration Department
 9975 Summers Ridge Road
 San Diego, CA 92121
 Attention: Jason Cox (858.805.2305), Melissa Salvador (858.805.3180) or Frank Mangiapane (858.805.8987)