



SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER GOVERNING BOARD COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 15.4
(ID # 22447)

MEETING DATE:
Tuesday, July 18, 2023

FROM : RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Approval of the Product Agreement with Biomerieux Inc., for Biofire Panels and Verification Kits, Effective July 18, 2023 through June 30, 2027, All Districts. [Total Cost \$4,385,540, up to \$109,639 in additional compensation, \$1,096,385 annually, 100% Hospital Enterprise Fund]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Product Agreement with Biomerieux Inc. for Biofire panels and verification kits for an annual amount of \$1,096,385 for 4 years through June 30, 2027, and authorize the Chairperson of the Board to sign the Agreement on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 and based on the availability of funding and as approved as to form by County Counsel, to sign amendments that make modifications to the scope of services that stay within the intent of the Agreement and to sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total annual cost of the Agreement.

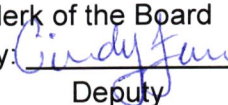
ACTION:Policy


 Jennifer Cruikshank, Chief Executive Officer - Health System 7/6/2023

MINUTES OF THE GOVERNING BOARD

On motion of Supervisor Perez, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Perez, Washington, and Gutierrez
 Nays: None
 Absent: None
 Date: July 18, 2023
 xc: RUHS-MC

Kimberly A. Rector
 Clerk of the Board
 By: 
 Deputy

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$1,096,385	\$1,096,385	\$4,385,540	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: 100% Hospital Enterprise Fund			Budget Adjustment: No	
			For Fiscal Year: 23/24 – 26/27	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Riverside University Health System Medical Center (RUHS-MC) previously engaged Biomerieux Inc. (Biomerieux) in March of 2020, during its procurement of rapid molecular diagnostic kits which provide diagnostics for a wide range of respiratory, gastrointestinal, and meningitis infections. These test kits are compatible with in-house testing modules already in place in the RUHS-MC clinical laboratory and deliver rapid test results which provide several advantages such as the ability to efficiently test staff, patients, maintain safety and compliance standards, and prepare for census surges.

Previously, procurement of these test kits was made possible through a Product Agreement that originated with the Riverside University Health System Public Health (Public Health) Department and included RUHS-MC as a participating user.

However, since the inception of the previous Product Agreement with Public Health, RUHS-MC's needs for test kits have increased beyond the compensation threshold of the previous Product Agreement. Contributing factors such as increased demand for patient testing, variant case surges, supply-chain disruptions, and healthcare worker testing mandates have contributed to RUHS-MC's increased test kit needs.

In order for RUHS-MC to comply with testing mandates, meet the testing needs of the community, and maintain appropriate staffing levels, an ample test kit supply must be secured. Test kits to be used by RUHS-MC must provide results quickly, and accurately. Current testing requires test samples to be collected and sent to offsite laboratories with results being made available days after which poses efficiency limitations.

One of the advantages Biomerieux offers health care providers such as RUHS-MC, is the ability to diagnose various respiratory infections quickly and efficiently by providing the ability to conduct testing in-house. The ability to conduct in-house testing eliminates the need to send tests out to third-party laboratories which reduces the average test turnaround time from three (3) days down to one (1) hour. This decreased testing turnaround time allows for early diagnosis and intervention by allowing medical providers to reduce the length of hospital stays and interim

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medications/treatment, resulting in reduced medical complications. Additionally, rapid test results allow staff to proactively decrease the risk of exposure to infections by quickly identifying patients who may be infected with certain diseases and being able to isolate them.

The ability to conduct rapid in-house testing will play a crucial role for RUHS-MC operations to move forward without interruption. Because Biomerieux's BioFire test kits allow for patients and medical staff to be tested quickly, patients are provided with appropriate treatment sooner, and staff is able to return to work within hours of being tested as opposed to days.

The requested Board action to approve a Product Agreement with Biomerieux will allow RUHS-MC to procure the rapid test kits needed for efficient patient care.

Impact on Residents and Businesses

These services are a component of RUHS's system of care aimed at improving the health and safety of its patients and the community.

Additional Fiscal Information

There are sufficient appropriations in the Department's FY23/24 budget. No additional County funds are required.

Contract History and Price Reasonableness

The proposed Product Agreement between RUHS-MC and Biomerieux includes a maximum annual compensation provision of \$1,096,385 to procure the necessary testing kits for patient care and to comply with current testing mandates.

Current pricing for BioFire RP2.1 Panel tests is deemed reasonable given that RUHS is provided with a 5% discount on a proprietary product that is currently in high demand.

The Product Agreement requires Board approval as the compensation provision exceeds the Purchasing Agent's authority and \$750,000 threshold for contracting with a single vendor for medical product distribution services per the Patient Care Resolution 2021-116.

ATTACHMENTS:

Attachment A:

**PRODUCT AGREEMENT FOR BIOFIRE PANELS AND
VERIFICATION KITS BETWEEN COUNTY OF RIVERSIDE AND
BIOMERIEUX INC.**

SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Meghan Hahn
Meghan Hahn, Deputy Director of Procurement 7/6/2023

Jacqueline Ruiz
Jacqueline Ruiz, Sr. Management Analyst 7/10/2023

Gregg Gu
Gregg Gu, Chief Deputy County Counsel 7/6/2023

PRODUCT AGREEMENT

for

BIOFIRE PANELS AND VERIFICATION KITS

between

COUNTY OF RIVERSIDE

and

BIOMERIEUX, INC.



JUL 18 2023 15.4

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This Agreement, made and entered into this 18 day of July, 2023, by and between BIOMERIEUX, INC., a Missouri corporation, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, on behalf of its Riverside University Health System (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all products (as defined herein) and services as outlined and specified in Exhibit A, Products and Service, to the Agreement at the prices shown therein. Warranty support will be provided according to the terms of CONTRACTOR's Standard Limited Warranty, and, if purchased, the Extended Warranty. CONTRACTOR's Standard Limited and Extended Warranties are attached as Exhibit B and incorporated in this Agreement.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform as required by this Agreement and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

1.5 BioFire® FilmArray® Torch Instruments ("Instruments") may be returned for full credit within five (5) calendar days of delivery, provided that COUNTY has not damaged the Instruments. Panels, defined as an FDA-cleared comprehensive test targeting an infectious disease syndrome on a broad group of pathogens, currently including the BioFire® FilmArray® Respiratory, Gastrointestinal, Blood Culture Identification, Pneumonia, Joint Infection, and Meningitis Panels, may not be returned except in the event that COUNTY has a warranty claim. Instruments and Panels collectively shall be called the "Products." Instruments will be deemed accepted upon COUNTY's written acceptance, or if not rejected in writing received by CONTRACTOR within five (5) days of delivery. To make a claim for defective, damaged, or missing Products, COUNTY must notify CONTRACTOR in writing within the allotted time period, and if applicable, return the product(s) to CONTRACTOR using a valid return authorization number (RMA). CONTRACTOR may refuse any product not timely rejected or returned without a valid RMA. For any valid

claim made, CONTRACTOR may elect to repair or to replace the product with a comparable product or to refund the purchase price of the product. These are COUNTY'S sole and exclusive remedies for defective, damaged, or missing product(s). With respect to potential defects or actual defects in the product(s), COUNTY reserves any and all rights to pursue CONTRACTOR for any potential defect or actual defect that is alleged to cause or causes bodily harm, injury, death, including, but not limited to, indemnity.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of both parties and continues in effect through June 30, 2027, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and receipt of a purchase order from COUNTY referencing this Agreement. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

3. Shipping, Risk of Loss, and Compensation

3.1 Unless COUNTY requests that products provided under this Agreement be shipped under its own account, CONTRACTOR will deliver such products to a common carrier for shipping, based upon CONTRACTOR's packaging, shipping and insurance practices, to the address designated by COUNTY ("Delivery Point"). CONTRACTOR ships all Products FOB Origin for delivery in the United States, COUNTY will bear all freight, insurance, and other shipping costs to Delivery Point. CONTRACTOR will not be liable for any failure or delay in shipping. CONTRACTOR will have the right, in its judgment, to apportion products among its customers in such manner as CONTRACTOR deems equitable.

3.2 Risk of loss or damage passes to COUNTY when products are delivered to a carrier, at which point, COUNTY is responsible for all loss or damage to the products, unless otherwise covered under Exhibit B, Warranty. No loss or damage will relieve COUNTY from its payment obligations under this Agreement. CONTRACTOR's warranty coverage also begins when products are delivered to a carrier. In the event of loss or damage during shipping, COUNTY may make a warranty claim to CONTRACTOR. After a warranty claim for loss or damage during shipping, any proceeds from insurance, if any, on the products will be paid to CONTRACTOR.

3.3 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit A, Products. Maximum payments by COUNTY to CONTRACTOR shall not exceed one million ninety six thousand three hundred and eighty five dollars and two cents (\$1,096,385.02), annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified

amount of services or products. Unless otherwise specifically stated in Exhibit A, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.4 No price increases will be permitted during the first year of this Agreement (If applicable). The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.5 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the date of shipment of products to COUNTY, and COUNTY shall pay the invoice within forty-five (45) days from the date of the invoice. Payments are deemed made by COUNTY when received by CONTRACTOR. New customers are subject to credit approval. CONTRACTOR accepts Visa, MasterCard and American Express. CONTRACTOR reserves the right to require other payment terms, including without limitation, payment in advance and/or letter of credit. COUNTY is not entitled to abate or reduce payments, or to offset any amount or charges against the amounts due to CONTRACTOR under this Agreement. Prepare invoices in duplicate. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Riverside University Health System – Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555
Attn: Fiscal Department

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number; quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered upon shipment of products and/or performance of services.

3.6 In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Codes, Section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event

that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or their designee are the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. Either Party may, upon five (5) days written notice, terminate this Agreement for the other Party's material default. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.2 After the receipt of the notice of termination, CONTRACTOR shall:

- a) Stop all work under this Agreement on the date specified in the notice of termination;
and
- b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.3 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

5.4 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever

to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.5 If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<https://sam.gov/content/exclusions>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

6.1 The permitted uses for the Products supplied by CONTRACTOR under this Agreement set forth in their Instructions for Use (the "Permitted Uses"), and the licenses provided with such products are for the Permitted Uses. COUNTY agrees to comply with all applicable laws and regulations when using the are products, COUNTY will store products in accordance with CONTRACTOR's storage and handling instructions (or, absent such instructions, in accordance with industry customs and standards), including all temperature and climate control standards.

6.2 All computer software, machine readable instructions or instruction sets owned or licensed by CONTRACTOR and delivered with or installed, loaded, integrated, embedded, bundled, incorporated or read into memory on the Products provided under this Agreement (the "Software"), other than software owned, developed, controlled, or licensed by a Party other than CONTRACTOR ("Third Party Software"), provided to COUNTY will be licensed subject to the terms set forth in the End-User License Agreement for a particular Software product. With respect to Third Party Software, COUNTY's license and rights to use such Third Party Software will be subject to the terms and conditions of use specified by the owner, developer or manufacturer.

6.3 Certain Licensing and Patent Matters. Many of CONTRACTOR's products are covered by U.S. patents, patents pending, or their foreign counterparts, owned or licensed by BioFire Diagnostics, LLC which may be viewed at www.biofire.com. Products purchased and sold hereunder are sold by CONTRACTOR solely for Permitted Uses by COUNTY. Depending on COUNTY's specific application(s), COUNTY may need one or more additional licenses or rights to use certain of the Products. CONTRACTOR disclaims any liability or responsibility to COUNTY with respect

to patents or other proprietary rights owned or controlled by third parties. Notwithstanding anything to the contrary in this Agreement, nothing contained herein will be deemed, construed or interpreted as:

(i) a grant, transfer or convey to COUNTY or any third party, expressly or by interference, of any right, title or interest in, or license or right to use, any, all or any portions of CONTRACTOR's inventions, patents, know-how, processes or procedures, technology, know-how, copyrights or trademarks, other than the right to use the Products for Permitted Use(s) only;

(ii) granting COUNTY any ongoing right to be supplied with, or to manufacture or to have manufactured, any quantities of products beyond those ordered in accordance with the terms and conditions of this Agreement; or

(iii) granting COUNTY the right to resell or convey in any manner the products or any components thereof to any third party anywhere in the world.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times upon advance written notice and within normal business hours. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the

difference cannot be corrected; the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement.

9. Independent Contractor/Employment Eligibility

9.1 The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

9.2 CONTRACTOR warrants that it shall use reasonable commercial efforts to comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

9.3 Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

9.4 CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this

Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

9.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

9.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. INTENTIONALLY OMITTED

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 Subject to the California Public Records Act, each Party shall be prohibited from using for personal gain and making other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; information or data which is not subject to public disclosure; operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 Subject to the California Public Records Act, neither Party shall use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. Each Party shall promptly transmit to the other, all third-party request for disclosure of such information. Neither Party shall disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the other Party, any such information to anyone other than the disclosing Party. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Riverside University Health System - Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555

CONTRACTOR

Biomerieux Inc.
515 Colorow Drive
Salt Lake City, Utah 84108
Attn: Chief Commercial Officer
With a concurrent copy to: Legal
Department

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will

be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 COUNTY will indemnify and hold CONTRACTOR harmless from and against any claim, demands, causes of action, or liability asserted by any third party and arising from or related to (a) the use, possession or operation of the Products inconsistent with their Instructions for Use, (b) the conduct by COUNTY of its business and operations, or (c) any breach of any covenant or representation or warranty made by COUNTY in this Agreement. CONTRACTOR will indemnify, defend and hold harmless, COUNTY from and against any claims, demands, caused of action or liability asserted by any third party arising from or related to (a) the design of the Products, or (b) the alleged infringement of any proprietary right related to the design of the Products, or (c) any breach of any covenant or any representation or warrant made by CONTRACTOR in this Agreement.

21.2 With respect to any action or claim subject to indemnification herein by the Indemnified Party, the Indemnifying Party shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Indemnified Party; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the indemnification to Indemnitees as set forth herein.

21.3 Indemnifying Party's obligation hereunder shall be satisfied when it has provided to Indemnified Party the appropriate form of dismissal relieving Indemnified Party from any liability for the action or claim involved.

21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

22. Insurance

22.1 Without limiting or diminishing the indemnity obligations herein, each Party shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. INTENTIONALLY OMITTED.

E. General Insurance Provisions - All lines:

1) Upon request, CONTRACTOR shall furnish to the County of Riverside either 1) a properly executed original Certificate(s) of Insurance and original copies of Endorsements effecting coverages as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original copies including all Endorsements and all attachments thereto, showing such insurance is in full force and

effect. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, upon request and prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

2) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

3) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

4) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

5) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

6) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect. Notwithstanding the above, CONTRACTOR may transfer and assign this Agreement without the COUNTY's consent to any other entity under common control with CONTROL or to another entity that acquires substantially all of the assets of CONTRACTOR.

23.2 Any waiver by a Party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of either Party to require exact, full, and complete compliance with any terms

of this Agreement shall not be construed as in any manner changing the terms or preventing that Party from enforcement of the terms of this Agreement.

23.3 CONTRACTOR may ship in more than one lot in which case each lot will be deemed a separate sale under this Agreement.

23.4 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other Agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has a good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

23.5 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.6 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.7 Each Party shall comply with all applicable Federal, State and local laws and regulations. Each Party will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.8 Each Party shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.9 Each Party shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.10 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.


23.11 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

23.12 This Agreement may be signed by the different parties hereto in counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

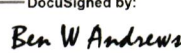
23.13 This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: 
Kevin Jeffries, Chair
Board of Supervisors

Biomerieux, Inc., a Missouri corporation

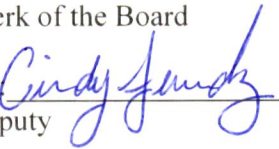
DocuSigned by:
Ben W Andrews
By: 
Name: Ben W Andrews
Title: VP, US Clinical Sales, bioMérieux


JUL 18 2023 15.4

Dated: 07/18/2023

Dated: 6/26/2023

ATTEST:
Kimberly Rector
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:
Minh C. Tran
County Counsel
By: 

Deputy County Counsel
Dated: Jun 27, 2023

JUL 18 2023 15.4

EXHIBIT A-Products and Service

Sales Quote for Riverside University Health System - Medical Center

DATE: 6/3/2022 10:54 AM

QUOTE: Q-34982

Quote Expiration Date: 6/30/2023

Prepared for:

Ship To Riverside University Health System - Medical Center 26520 Cactus Avenue Moreno Valley, California 92555 United States	Bill To Riverside University Health System - Medical Center 26520 Cactus Avenue Moreno Valley, California 92555 United States
--	--

bioMérieux

Sales Representative:

Gordon MARSH gordon.marsh@biomerieux.com 2420

Reagents

Qty	Unit	Description	Part #	List Unit Price	Disc. %	Sales Price	Total Price
200.00	Each	BIOFIRE RP2.1 PANEL, 30 TESTS IVD - 423742	423742	\$4,050.00	6.00	\$3,807.00	\$761,400.00
13.00	Each	FILMARRAY GI PANEL, 30 TESTS - RFIT-ASY-0116	RFIT-ASY-0116	\$4,650.00	5.00	\$4,417.50	\$57,427.50
13.00	Each	FILMARRAY ME PANEL, 30 TESTS - RFIT-ASY-0118	RFIT-ASY-0118	\$5,790.00	5.00	\$5,500.50	\$71,506.50
25.00	Each	BIOFIRE BCID2 PANEL, 30 TESTS - RFIT-ASY-0147	RFIT-ASY-0147	\$3,870.00	0.00	\$3,870.00	\$96,750.00

Reagents Total: \$987,084.00
Freight Total: \$32,802.01
Tax Total: \$76,499.01
Quote Total: \$1,096,385.02

FREIGHT AND SHIPPING ARE PROVIDED AS ESTIMATES ONLY



Sold 12 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

Agreement Total: \$1,096,385.02

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>

EXHIBIT B- Standard Limited and Extended Warranties



Standard Limited Warranty

Before returning any Product, please consult the instructions below and contact BioFire Diagnostics, LLC ("BFDX") Technical Support at either: (800) 735-6544, (801) 736-6354, or support@biofiredx.com. **CUSTOMER AGREES TO ALL TERMS, CONDITIONS AND OBLIGATIONS CONTAINED IN THIS STANDARD LIMITED WARRANTY.**

1. **DEFINITIONS.** "Pouch" means the clinical diagnostic thermal cycling oligonucleotide assays or primers, probes or reagents manufactured by BFDX. "Instrument(s)" means FilmArray® 1.5, FilmArray® 2.0, FilmArray® Torch devices which are manufactured and/or distributed by BFDX or through a third-party approved by BFDX. "Software" means software developed and distributed by BFDX. "Third-party Software" means software developed, sold, or licensed by a party other than BFDX. "Third-party Products" mean any Pouch, Instrument or ancillary product used with the Instruments that is manufactured by a party other than BFDX. "Product" means a Pouch, Instrument or parts or components thereof, and/or Software manufactured by BFDX. "Specifications" means the criteria established by BFDX in a user manual to measure, evaluate, or assess the operation or performance of the applicable Product subject to any updates or modifications by BFDX after receipt of the Product by Customer.
2. **WARRANTY TERM.** This Limited Warranty begins when BFDX gives Products to a carrier/shipper for delivery to Customer. The warranty is effective from that date for a period of twelve (12) months. Customer may purchase an extended warranty from BFDX to cover Products beyond this initial twelve (12) month period. Instrument repairs and replacements are covered by this Standard Limited Warranty for (i) ninety (90) days after the date of repair or replacement or (ii) the remainder of the original warranty period, whichever is longer.
3. **WARRANTY COVERAGE.** Subject to the terms and conditions herein, BFDX warrants that:
 - (i) Instruments will be materially free from defects in material and workmanship, and will perform substantially in accordance with the Specifications in BFDX's user manual;
 - (ii) Properly installed and executed software will operate substantially in accord with the Specifications when used with an Instrument sold by BFDX or by a third-party approved by BFDX;
 - (iii) Pouches will be materially free from defects in material and workmanship, and when properly stored and maintained by Customer in compliance with the user manual will be usable for at least the period of time stated on its label.

The original end-user customer ("You" "Your" or "Customer") is the person with rights under this Limited Warranty. The Customer's rights and obligations under this Limited Warranty will bind and inure to the benefit of Customer's respective successors, heirs, executors and administrators and permitted assigns.

4. **WARRANTY EXCLUSIONS.** This Limited Warranty excludes: (i) repairs or other services which are necessary because of any use that does not conform to the user manual; (ii) normal wear and tear other than an operational or mechanical breakdown; (iii) decontamination of an Instrument; (iv) theft or other loss; (v) damage that does not affect functionality; (vi) problems arising from or related to misuse, alteration, neglect, accident, or reckless, abusive, willful or intentional conduct; (vii) problems arising from or related to external electrical power sources; (viii) improper maintenance, repair, or disassembly (including partial disassembly) by anyone other than BFDX or its authorized representatives or using parts, accessories or supplies not provided by BFDX; (ix) problems arising from or related to Software on any device other than the device sold by BFDX or through a third-party approved by BFDX; (x) instruments, devices, consumables, or accessories manufactured by any party other than BFDX, including assays, centrifuges, computers, monitors, printers or other peripheral accessories or devices, and Third-party software, including the device operating system or applications software if explicitly unapproved by BFDX (other than Software); and (xi) any cost incurred for additional equipment, parts, or accessories related to a Software upgrade or new version of the Software.
5. **BENEFITS OF THIS LIMITED WARRANTY.** This Limited Warranty provides the following benefits to Customer:

Loss or Damage During Shipping: In the event that Products are lost or damaged during shipping by a carrier, BFDX will replace the Products upon notice from the Customer initiating a claim as provided by Section 7 below;

Instrument Repairs: BFDX will furnish labor, parts and/or replacement equipment necessary to repair operational or mechanical breakdowns of an Instrument as provided by Section 3 above;

Software Upgrades: BFDX will provide new versions, releases or upgrades of the Software as provided by Section 3 above, provided that BFDX may require Customer install and use a Software upgrade as a condition precedent to continued services under this Limited Warranty;
Optional Instrument Recalibration and Quality Inspection: No more than one (1) time during the period of this Limited Warranty, Customer may return an Instrument for recalibration, maintenance and quality inspection;
Telephone Support: BFDX currently offers twenty-four hour telephone customer support by calling BFDX's Customer Support Department subject to the terms, conditions and limitations of this Limited Warranty.

6. **ASSIGNMENT OF THIRD PARTY WARRANTIES.** While BFDX extends no warranty and has no liability or obligation with respect to Third Party Items, BFDX assigns (to the extent permitted to do so) any applicable third party manufacturer warranties to Customer.
7. **INITIATING WARRANTY CLAIMS AND SERVICE.** In order to obtain warranty service, contact Customer Support to evaluate the claim as directed above. Customer Support may ask Customer to report the issue in writing. BFDX may attempt to resolve the problem over the telephone. If your problem cannot be resolved over the telephone, BFDX will determine (in its sole discretion) the most practicable resolution, which may include one or more of the following: (i) shipment of new or reconditioned replacement parts on an exchange basis together with instructions for Customer to perform installation, (ii) shipment of a new or reconditioned replacement Instrument that is at least functionally equivalent to the original Instrument on an exchange basis, (iii) shipment of a new, in-service or reconditioned Instrument that is at least functionally equivalent to the original Instrument on a temporary "loan" basis, (iv) assistance from BFDX's Field Support Specialists, or authorized distributors at Customer's location, or (v) issuance of a return material authorization (RMA) for Customer to return the Product for repair or replacement by BFDX. If BFDX elects to ship a replacement Product to Customer, the original Product becomes BFDX property upon Customer's receipt of the replacement. Customer must return the original Product to BFDX within twenty (20) days after Customer's receipt of the replacement Product, or pay BFDX the retail value of the replacement Product.
8. **CUSTOMER REQUIREMENTS TO RETURN FOR SERVICE.** If BFDX elects to repair a defective Product in its facility, the defective Product must be received by BFDX no later than thirty (30) days after the date BFDX issued the RMA. Prior to shipping the defective Product to BFDX, Customer must follow the return instructions specified by BFDX including, without limitation, decontamination, data backup procedures, other procedures specified by BFDX, and all shipping instructions. Failure to follow all instructions may result in delay of return of the Product. Customer is solely responsible for shipment of the Product to BFDX free of any biological, chemical or organic materials, agents or toxins and otherwise in accordance with all applicable laws, rules and regulations, and BFDX reserves the right to refuse delivery or return the product without service if Customer does not strictly comply with this requirement. Further, Customer is solely responsible for backing up any data to enable Customer to reconstruct or recover lost or altered data and for removing any confidential, proprietary or personal information. BFDX disclaims responsibility for any lost, damaged or destroyed software program, data or other information stored on any data storage media or any part of any Product covered by this Limited Warranty, and BFDX disclaims responsibility for deletion or alteration of the contents of any hard drive or data storage media which may occur during service of a Product. BFDX is not responsible for the restoration or reinstallation of any programs or data other than software installed by BFDX when the Instrument was originally manufactured. When making repairs, BFDX reserves the right to use reconditioned or replacement items or parts that are at least functionally equivalent to original manufacturer specifications.
9. **WARRANTY RETURNS FROM OUTSIDE THE U.S.** If an ITAR-controlled Instrument is to be returned to BFDX from outside the U.S., You must follow all steps set forth in Section 8. Failure to follow all instructions can result in a U.S. export violation, potentially necessitating acquiring a further export license. Further, shipping non-compliance may result in a several-week delay of the Instrument's return shipment to Customer. Customers outside the U.S. may be required to seek further information from their authorized distributor.
10. **WARRANTY SERVICE RESPONSE TIMES.** If a defective Product is sent to BFDX under an RMA, BFDX will repair or replace the Product and deliver it to a carrier for return shipment to Customer, as promptly as possible, and in most cases within ten (10) working days after BFDX's receipt of the defective Product and all required RMA documentation. Except for incremental shipping costs as provided above, BFDX will not be liable for any delay in providing services under this Limited Warranty.
11. **BREACH.** In the event of any breach of this Limited Warranty: (i) as to Instruments, Your sole remedy will be for BFDX to repair or replace the Instrument with new or refurbished parts, free of charge, at BFDX's facility and (ii) as to Software or Pouches, Your sole remedy will be for BFDX to repair, replace or correct such Software or Pouches (including, at BFDX's election, replacement with a new version of the Software). This Limited Warranty specifically includes labor and materials. BFDX will pay all costs associated with shipping and return shipping of Products only during the term of this Limited Warranty.
12. **LIMITATIONS.** Except as expressly set forth above, BFDX makes no further or additional representations or warranties of any kind or nature with respect to the Products. Any description of the Products contained on BFDX's website or promotional materials is for the sole purpose of identifying them. No affirmation of fact or promise made by BFDX, on its website or otherwise, will constitute a warranty that the Products will conform to the affirmation or promise. BFDX DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, INTEROPERABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BFDX DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. The entire risk arising out of the use or performance of the Products

remains with Customer. BFDX will not be liable for loss of or damage to systems, programs, or data; cost of procurement of substitute goods, services, or technology; or any special, indirect, incidental, consequential, or exemplary damages including, but not limited to, damages for loss of business profits or business interruption, based upon principles of contract, warranty, negligence, strict liability or other tort, breach of any statutory duty, principles of indemnity or contribution, or any other theory of liability, even if BFDX has been advised of the possibility of such damages. Notwithstanding anything to the contrary in this Limited Warranty, in no event will the liability of BFDX (whether arising from a claim based on contract, warranty, tort or otherwise), if any, to Customer under this Limited Warranty exceed the five times the actual amount paid to BFDX in connection with its sale or distribution of the applicable Product(s).

13. MISCELLANEOUS.

- (i) All Limited Warranty provisions and agreements will be binding upon and ensure to the benefit of the parties and their respective legal representatives, successors and assigns. BFDX may assign its rights and delegate its duties under this Limited Warranty by written notice to Customer.
- (ii) This Limited Warranty and the related certificate of coverage constitute the entire understanding of the parties with respect to the subject matter hereof. No amendment, modification, rescission or alteration of these terms will be binding unless made in writing, and signed by BFDX and Customer.
- (iii) Every provision of this Limited Warranty is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Limited Warranty.
- (iv) BFDX and Customer agree that the validity, construction and performance of this Limited Warranty will be governed by the laws of the State of California, USA (excluding any of its conflict of laws principles). Venue for any dispute or proceeding arising from or related to this Limited Warranty will be exclusively vested in any state or federal court located in Riverside County, State of California, USA, and each party irrevocably and unconditionally consents to the jurisdiction of such courts and irrevocably and unconditionally waives any claims, defenses or objections, whether substantive or procedural, based upon lack of personal jurisdiction, inconvenient venue or the like.

- 14. U.S. GOVERNMENT-SPECIFIC PROVISIONS.** BFDX warrants to the U.S. Government that the Products delivered hereunder are merchantable and fit for use for the particular purpose described in the applicable contract. In the event that the terms of BFDX's Limited Warranty conflict with the warranty terms contained in this clause, the terms of this clause will govern the contract, unless some other resolution is specified in the award document. Except as otherwise provided by an express warranty, BFDX will not be liable to the United States Government, or any of its agencies, employees, or agents, in a breach of warranty action for consequential damages resulting from any defect or deficiencies in accepted items. In the event that the terms of BFDX's Limited Warranty limitation of liability clause(s) place greater limits on BFDX's liability than do the terms contained in this clause, the terms of this clause will govern the contract.

For more information regarding BFDX's Limited or Extended Warranties, or to receive a quote for coverage on your Instrument, please contact us at 1- 800-735-6544. Be sure to have the serial number of your Instrument when requesting a quote.

Before returning any Product, please consult the instructions below and contact BioFire Diagnostics, LLC ("BFDX") Technical Support at either: (800) 735-6544, (801) 736-6354, or support@biofiredx.com. CUSTOMER AGREES TO ALL TERMS, CONDITIONS AND OBLIGATIONS CONTAINED IN THIS EXTENDED WARRANTY.

1. **DEFINITIONS.** "Pouch" means the clinical diagnostic thermal cycling oligonucleotide assays or primers, probes or reagents manufactured by BFDX. "Instrument(s)" means FilmArray® 1.5, FilmArray® 2.0, and/or FilmArray® Torch devices which are manufactured and/or distributed by BFDX. "Third-party Products" mean any Pouch, Instrument or ancillary product used with the Instruments that is manufactured by a party other than BFDX. "Product" means a Pouch, Instrument or parts or components thereof, and/or Software manufactured by BFDX. "Specifications" means the criteria established by BFDX in a user manual to measure, evaluate, or assess the operation or performance of the applicable Product subject to any updates or modifications by BFDX after receipt of the Product by Customer.

2. **EXTENDED WARRANTY PURCHASE.** This Extended Warranty can be purchased from BFDX or BFDX's authorized distributor at the time of Customer's original purchase or lease of the Instrument. Thereafter, Customer must apply for the Extended Warranty by contacting BFDX's authorized distributor or the BFDX Technical Support Department. As a precondition to purchasing an Extended Warranty after the time of the original purchase or lease, BFDX may require, in its sole discretion, that Customer: (a) ship the Instrument to BFDX for repair and recalibration to original manufacturer specifications; (b) upgrade the Software to the most recent version or release that would have been provided to Customer if the Extended Warranty had been maintained in effect from and after the time of Customer's original purchase or lease of the Instrument; and/or (c) the installation of any applicable bug fixes to the Software. If BFDX requires Customer to comply with any of these options, such requirement(s) will be at Customer's sole cost and expense (at BFDX's then current standard repair and replacement or Software upgrade/bug fix fees) and payable prior to purchasing this Extended Warranty.

3. **WARRANTY TERM.** This Extended Warranty begins on the date of expiration of the Standard Limited Warranty, and continues in effect for one year, or the period of time provided in the Sales Quote. Coverage is only effective upon payment by Customer. If Customer purchases an Extended Warranty after expiration of the Standard Limited Warranty, then the Extended Warranty Coverage begins once the Instrument has been checked and recalibrated by BFDX and shipped back to Customer as per Paragraph 7. This Extended Warranty does not alter, modify or replace BFDX's Standard Limited Warranty, but rather extends additional benefits for an additional period thereafter. The coverage period can be extended for additional one (1) year coverage periods by delivering written notice of renewal to BFDX's Customer Support Department, together with the then-current renewal premium quoted by BFDX's Customer Support Department, provided that the notice and renewal premium must be received by BFDX prior to the expiration of the then-current coverage period.

4. **BENEFITS OF THIS EXTENDED WARRANTY.** This Extended Warranty provides the original end-user customer ("Customer" or "You") with rights under this Extended Warranty. The Customer's rights and obligations under this Extended Warranty will bind and inure to the benefit of Customer's respective successors, heirs, executors and administrators and permitted assigns and provides the following benefits to Customer:

- (i) **Standard Limited Warranty Extension:** BFDX's Standard Limited Warranty applicable to the Instruments and Software will be extended for the Coverage Period of this Extended Warranty;
- (ii) **Instrument Repairs:** BFDX will furnish labor, parts and/or replacement equipment necessary to repair operational or mechanical breakdowns of an Instrument;
- (iii) **Software Upgrades:** BFDX will provide new versions, releases or upgrades of the Software, but only if and to the extent made generally available by BFDX to its customers using comparable BFDX-manufactured instruments during the Coverage Period of this Extended Warranty; provided, however, that BFDX may require that Customer install and use a Software upgrade as a condition precedent to its continued services under this Extended Warranty;
- (iv) **Optional Instrument Recalibration and Quality Inspection:** No more than one (1) time during each yearly Coverage Period, Customer may return an Instrument for recalibration, maintenance and quality inspection;
- (v) **Telephone Support:** BFDX currently offers twenty-four hour telephone support by calling BFDX's Customer Support Department subject to the terms, conditions and limitation of this Extended Warranty.

5. **WARRANTY EXCLUSIONS.** This Extended Warranty excludes: (i) repairs which are not necessitated by operational or mechanical breakdown during normal use; (ii) normal wear and tear not resulting in operational or mechanical breakdown; decontamination required as a result of use and operation; (iii) theft, loss, or misplacement; cosmetic damage or other damage that does not affect functionality; (iv) problems arising from or related to misuse, neglect, accident, viruses or reckless, abusive, willful or intentional conduct; (v) problems arising from or related to external electrical power sources; improper maintenance, repair, or disassembly (including partial disassembly) by anyone other than BFDX or its authorized representatives or using parts, accessories or supplies not provided by BFDX; (vi) problems arising from or related to usage which is not in accordance with instructions in the user manual published by BFDX for the Instrument or Software; (vii) problems arising from or related to failure to perform preventive maintenance as and when recommended by BFDX in the user manual published by BFDX for the Instrument; (viii) problems arising from any modification of the Instruments or Software without the prior written consent of BFDX; (x) the cost of new or additional equipment, devices, parts or accessories (other than the Instrument or its component parts, to the extent covered under this Extended Warranty) or third party software (other than the Software) required as a condition of implementing any Software upgrade, new version, workaround; (xi) Third Party Items, except to the extent assignable or transferable, BFDX assigns all manufacturer warranties of Third Party Items to its customers.

6. **INITIATING WARRANTY CLAIMS AND SERVICE.** In order to obtain service, contact Customer Support to evaluate the claim as directed above. Customer Support may ask Customer to report the issue in writing. BFDX may attempt to resolve the problem over the telephone. If your



problem cannot be resolved over the telephone, BFDX will determine (in its sole discretion) the most practicable resolution, which may include one or more of the following: (i) shipment of new or reconditioned replacement parts on an exchange basis together with instructions for Customer to perform installation, (ii) shipment of a new or reconditioned replacement Instrument that is at least functionally equivalent to the original Instrument on an exchange basis, (iii) shipment of a new, in-service or reconditioned Instrument that is at least functionally equivalent to the original Instrument on a temporary "loan" basis, (iv) assistance from BFDX's Field Support Specialists, or authorized distributors at Customer's location, or (v) issuance of a return material authorization

(RMA) for Customer to return the Product for repair or replacement by BFDX. If BFDX elects to ship a replacement Product to Customer, the original Product becomes BFDX property upon Customer's receipt of the replacement. Customer must return the original Product to BFDX within twenty (20) days after Customer's receipt of the replacement Product, or pay BFDX the retail value of the replacement Product.

7. **CUSTOMER REQUIREMENTS PRIOR TO RETURN FOR SERVICE.** If BFDX elects to repair a defective Product in its facility, the defective Product must be received by BFDX no later than thirty (30) days after the date BFDX issued the RMA. Prior to shipping the defective Product to BFDX, Customer must follow the return instructions specified by BFDX including, without limitation, decontamination, data backup procedures, other procedures specified by BFDX, and all shipping instructions. Failure to follow all instructions may result in delay of return of the Product. Customer is solely responsible for shipment of the Product to BFDX free of any biological, chemical or organic materials, agents or toxins and otherwise in accordance with all applicable laws, rules and regulations, and BFDX reserves the right to refuse delivery or return the product without service if Customer does not strictly comply with this requirement. Further, Customer is solely responsible for backing up any data to enable Customer to reconstruct or recover lost or altered data and for removing any confidential, proprietary or personal information. BFDX disclaims responsibility for any lost, damaged or destroyed software program, data or other information stored on any data storage media or any part of any Product covered by this Limited Warranty, and BFDX disclaims responsibility for deletion or alteration of the contents of any hard drive or data storage media which may occur during service of a Product. BFDX is not responsible for the restoration or reinstallation of any programs or data other than software installed by BFDX when the Instrument was originally manufactured. When making repairs, BFDX reserves the right to use reconditioned or replacement items or parts that are at least functionally equivalent to original manufacturer specifications.
8. **WARRANTY SERVICE RESPONSE TIMES.** If a defective Product is sent to BFDX under an RMA, BFDX will repair or replace the Product and deliver it to a carrier for return shipment to Customer, as promptly as possible, and in most cases within ten (10) working days after BFDX's receipt of the defective Product and all required RMA documentation. Except for incremental shipping costs as provided below, BFDX will not be liable for any delay in providing services under this Extended Warranty.
9. **DOMESTIC SHIPPING AND INSURANCE COSTS.** BFDX is responsible for all domestic costs of shipping, insurance and related costs of delivery of the BFDX instrument (or defective component thereof).
10. **INTERNATIONAL SHIPPING AND INSURANCE COSTS AND ADDITIONAL REQUIREMENTS.** If an ITAR-controlled Instrument is to be returned to BFDX from outside the U.S., Customer must first contact BFDX's Customer Support Department for an RMA. Customer must follow all shipping instructions provided by BFDX's Customer Support Department, including using BFDX's designated shipper (if any). Failure to follow all instructions can result in a U.S. export violation, potentially necessitating acquiring a further export license. Further, shipping non-compliance may result in a several-week delay of the Instrument's return shipment to Customer. Customer will be charged a one-time flat handling fee of \$250.00 (Two Hundred Fifty United States Dollars) to offset shipment and return shipment costs, and BFDX will pay all other international (OCONUS) costs of shipping, in transit insurance, duty, taxes and related costs, except that Customer bears all risk of loss or damage during transit. BFDX will make all shipments in a commercially reasonable manner without obligation to incur any overnight, expedited or other special handling charges. However, when repair or replacement is covered under this Extended Warranty, if and to the extent BFDX is unable to repair or replace the BFDX instrument and deliver the BFDX instrument to a common carrier for return shipment to Customer within ten (10) business days after the later of (i) its receipt by BFDX or (ii) receipt by BFDX of all required RMA documents or information from Customer, BFDX will pay any incremental costs incurred for expedited delivery service to Customer. Except for such incremental shipping costs, BFDX will not be liable for any delay in providing services under this Extended Warranty.
11. **ADDITIONAL CHARGES.** If BFDX repairs or refurbishes an Instrument at Customer's request, in circumstances where such repair or refurbishment is not covered by this Extended Warranty, Customer will pay for such repair or refurbishment at BFDX's then current standard repair and replacement fees, plus applicable taxes, shipping and insurance costs. Payment will be due and payable within thirty (30) days following the date of BFDX's invoice. Payments are deemed made when received by BFDX. Interest will accrue on any unpaid balances at a rate of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) from and after the due date.
12. **LIMITATIONS.** Except as expressly set forth above, BFDX warrants only that its services under the Extended Warranty will be performed in a professional and workmanlike manner, consistent with its standard of care in the state and county in which its principal place of business is located. **BFDX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Some state laws do not allow the exclusion of implied warranties. Any implied warranties that may be imposed by law are limited in duration to the term of this Extended Warranty. Notwithstanding anything to the contrary in this Extended Warranty, in no event will the liability of BFDX (whether arising from a claim based on contract, warranty, tort or otherwise), if any, to Customer under this Extended Warranty exceed five times the actual amount paid to BFDX in connection with its sale or distribution of the applicable Product(s). This limitation will apply regardless of the form of legal action. In the event BFDX replaces an Instrument with a new or reconditioned Instrument that is at least functionally equivalent to original Instrument or



reimburses Customer for the original purchase price, minus the cost of prior repairs of the Instrument (calculated at BFDX's normal service labor and materials rates), BFDX will have satisfied all of its obligations under this Extended Warranty. Repair or replacement of the Instrument, cure of the Software or refund of the Extended Warranty price, minus the cost of prior repairs, are Customer's exclusive remedies for breach of this Extended Warranty. To the maximum extent permitted by law, BFDX will not be liable to Customer for indirect, special, incidental, or consequential damages arising from the services provided under this Extended Warranty, delay in furnishing services, or failure to furnish services, including without limitation, loss of data or software, loss of use or lost profits, whether based in contract, tort or otherwise, even if BFDX has been advised of the possibility of such damages. Some states do not allow the limitation or exclusion of incidental or consequential damages, so the above limitations and exclusions may not apply to a particular Customer.

13. MISCELLANEOUS.

- (i) The obligations of BFDX under this Extended Warranty are backed by the full faith and credit of BFDX. BFDX is the Extended Warranty seller and provider.
- (ii) Each of the provisions and agreements herein contained will be binding upon and ensure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. BFDX may assign its rights and delegate its duties under this Extended Warranty by written notice to Customer.
- (iii) This Extended Warranty and the Certificate of Coverage constitute the entire understanding of the parties with respect to the subject matter hereof. No amendment, modification, rescission or alteration of these terms will be binding unless made in writing, and signed by BFDX.
- (iv) Every provision of this Extended Warranty is intended to be severable. If any term or provision is found illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Extended Warranty.
- (v) BFDX and Customer agree that the validity, construction and performance of this Extended Warranty will be governed by the laws of the State of California, USA (excluding any of its conflict of laws principles). Venue for any dispute or proceeding arising from or related to this Extended Warranty will be exclusively vested in any state or federal court located in Riverside County, State of California, USA, and each party irrevocably and unconditionally consents to the jurisdiction of such courts and irrevocably and unconditionally waives any claims, defenses or objections, whether substantive or procedural, based upon lack of personal jurisdiction, inconvenient venue or the like.

For more information regarding BFDX's Extended Warranty, or to receive a quote for coverage on your Instrument, please contact us at 1-800-735-6544. Be sure to have the serial number of your Instrument when requesting a quote.









Agreement_Biomerieux Product Agreement 2022-2027_AATF 061223_Clean_Vendor sign_

Final Audit Report

2023-06-27

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By:	Gilbert Rivera (g.rivera@ruhealth.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA3Kjs-GeFzzQPC0jkkx49Jf4afqPgmh90

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