

These terms and conditions (the “Terms”) govern all transactions between Customer and bioMérieux, as each is defined in Section 1, involving the Services (as defined below). By executing the bioMérieux Quote (such executed document referred to herein as the “Quote” and further defined below), or accepting delivery of the Services, Customer agrees to the Terms in full. If there is any discrepancy or conflict between the Terms and the Quote, the Terms shall govern and control. Notwithstanding anything herein to the contrary, if there is a master agreement signed by Customer and bioMérieux governing the services covered hereby (a “Master Agreement”), the terms and conditions of that Master Agreement shall prevail to the extent they are inconsistent with the Terms. The Quote, which is hereby incorporated by reference herein, and the Terms (collectively, the “Agreement”) comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral, and shall not be supplemented or explained by any evidence of trade usage or course of dealing. All Customer terms and conditions on any Customer documentation or contract are hereby objected to and rejected and shall be of no force and effect or deemed to be binding on bioMérieux in whole or in part.

## 1. Definitions

“**bioMérieux**” shall mean bioMérieux, Inc.

“**Customer**” shall mean the entity or person(s) listed on the Sales Quote or the original purchaser of the Product.

“**Advanced Integration Engine**” shall mean any instance of the Corepoint Integration Engine deployed in connection with a bioMérieux product.

“**Permitted Uses**” shall mean the field of use and/or application of the Products (or specific Products or classes of Products) by end-users, as specified on Product labels or inserts affixed to or accompanying the Products, subject to any restrictions or limitations on usage set forth therein.

“**Product**” shall mean the, Advanced Integration Engine(s).

“**Quote**” shall mean the Service Level Descriptions, attached hereto and incorporated by reference and/or the service quotation or estimate provided by bioMérieux.

“**Services**” shall mean the maintenance or repair services described in the Service Level Descriptions attached hereto and incorporated by reference, and/or as designated on the service quotation or estimate provided by bioMérieux.

“**Third Party Licenses**” shall mean the rights or licenses of Customer under contractual agreements between Customer and one or more third parties.

“**Warranty**” shall mean bioMérieux’s warranty described herein in Section 8.

## 2. Term

This Agreement is effective from the commencement date as set forth in the Quote and shall continue for the term set forth in said Quote. Notwithstanding the foregoing, either party may terminate this Agreement upon thirty (30) days prior written notice to the other Party. Notice of termination by bioMérieux shall be sent to Customer’s address listed on the Quote. Notice of termination by Customer shall be sent to: [CLARION@biomerieux.com](mailto:CLARION@biomerieux.com). If terminated, a refund will be paid to Customer equal to the annual contract price less the price for work performed to date, calculated using prevailing labor rates; with any remaining amount to be pro-rated from the date of termination through the contract expiration date.

## 3. Product Eligibility

The Services provided under this Agreement apply only to the bioMérieux furnished Product set forth in the Quote. In the event there has been a period in excess of thirty (30) days from the expiration of previous service agreement, bioMérieux shall have the right to suspend access to the Product until a mutually agreeable resolution has been reached.

## 4. Payment Terms

Customer shall pay the price set forth in the Quote. Payment is due thirty (30) days from receipt of invoice. bioMérieux shall have the right to charge an administrative fee equal to 2.5% of the quoted service agreement price for any change by Customer in the billing frequency after submission of the initial order for a service contract. In case of delayed payment, bioMérieux shall have the right to charge interest at a rate not to exceed one and one half percent (1 ½ %) per month, or the maximum amount allowed by law, whichever is less. bioMérieux also reserves the right to claim a reasonable compensation for any additional recovery expenditure. In the event Customer fails to (a) pay a single installment, (b) comply with any payment terms and conditions, or (c) if bioMérieux deems that the Customer's financial situation creates a risk of non-payment of amounts owed, bioMérieux reserves the right to automatically terminate this Agreement without further liability or penalty upon written notice to Customer. Unless approved in writing in advance by bioMérieux, invoices shall be paid by cash, check, or ACH. bioMérieux reserves the right to reject all credit card payments initiated after the point of sale.

## **5. Customer Obligations**

Customer shall: (a) be responsible for procurement of supplies necessary for the proper operation of the Product; (b) provide access to the Product during the hours of coverage under this Agreement ("Coverage Hours"), and access to and use of any machines, attachments or other equipment of Customer reasonably necessary to provide the specified Services; (c) follow all bioMérieux instructions in preparation for any Service implementation, including instructions regarding Customer's network readiness; (d) operate and use the Product in accordance with applicable law and all bioMérieux instructions and guidelines provided to Customer; (e) ensure all verification and maintenance control is performed in accordance with all user manuals or maintenance records provided by bioMérieux, (f) take all necessary precautions to protect the Product, Customer's own data, property, and software, from and against any computer viruses or eventual intrusions and/or malicious codes; (g) maintain control of all passwords established by Customer related to the Product and/or bioMérieux software; and (h) ensure no third party unauthorized by bioMérieux performs the Services hereunder or other repair or maintenance services. Customer shall promptly disclose to bioMérieux any communication that it makes or receives from a government body, agency, or other regulatory or accrediting body pertaining to the Products or Customer's use thereof. Customer shall provide bioMérieux with and shall assist bioMérieux in obtaining any and all error and other information generated through use of the Product, as reasonably requested by bioMérieux. Customer acknowledges and agrees that bioMérieux shall have the right to use such information, provided that such use is in compliance with applicable laws and regulations. Customer shall provide a secure Internet connection and hereby authorizes bioMérieux or its representative to install VILINK® (SSL-based encrypted remote access support) in accordance with Customer protocols to allow for remote deployment of the Product. Without prejudice to any other right or remedy available to it under this Agreement, bioMérieux reserves the right to charge additional fees for the Services or terminate coverage under this Agreement in bioMérieux's sole discretion for a breach of a Customer obligation above.

## **6. bioMérieux's Obligations**

Subject to the Quote and Service Level Descriptions, bioMérieux shall provide to Customer remedial maintenance by remote maintenance, to assess the malfunction and provide corrective solutions. If bioMérieux is denied access to maintain the Product during Coverage Hours, work performed during non-Coverage Hours shall be charged at the then prevailing bioMérieux rates.

## **7. Exclusions**

The following are expressly excluded from the Services, and the Services do not include any services or other obligation by bioMérieux, to the extent required in connection with, as a result of, or arising from: (a) Customer's or any third party's error, neglect, or abuse in the operation of the Product, or the use of the Product for a purpose other than that for which it was designed; (b) Customer's failure to provide a suitable technical environment for the Product; (c) Customer's failure to maintain adequate antiviral software in the Product environment; (d) repair or service made or attempted by any party other than bioMérieux's authorized personnel; (e) alterations performed by any party other than bioMérieux, which may include, but not be limited to, any deviation from the manufacturer's programming, software or electrical design of the Product; (f) service and/or support on any LIS interface (unless otherwise agreed to in writing); (g) software not provided by bioMérieux or for the consequences of the use thereof, or for any damage caused by computer viruses, trojan horses, malicious or dangerous code, or any other element of the same nature not introduced or activated by bioMérieux or occurring due to reasons outside of bioMérieux's reasonable control; and (i) accidents or disasters, which will include, but not be limited to, fire, flood, water, wind, lightning, earthquake, and termination of or surge in electric current. Service calls made by bioMérieux, and any related labor required to correct Product malfunctions resulting from causes set forth above, including any repairs

and labor resulting from a breach of Customer's obligations as set out in Section 5, shall be invoiced by bioMérieux to Customer at bioMérieux's then current on-demand rates. bioMérieux shall have no obligation to replace a Product regardless of installation date that does not have an active maintenance contract.

## **8. Warranty**

bioMérieux warrants that the Services to be performed hereunder shall be performed in a professional, workmanlike manner, and shall conform to bioMérieux's standards. Customer's sole and exclusive remedy for breach of the above warranty shall be for bioMérieux to provide Customer with a repair or replacement of the Product which is found to be defective due to a breach of the above warranty.

The Warranty is personal to the Customer and may not be transferred in whole or in part to any third party, including an affiliate of Customer. Only the Customer as defined in these Terms may enforce the Warranty. Any description of the Products contained on bioMérieux's website or promotional materials is for the sole purpose of identifying them, and any such description is not a part of the basis of the bargain and does not constitute a warranty that a Product shall conform to that description. No affirmation of fact or promise made by bioMérieux, on its website or otherwise, shall constitute a warranty that the Products will conform to the affirmation or promise. Customer acknowledges and agrees Customer has not relied on any other statement, promise, representation, or warranty made by or on behalf of bioMérieux which is not expressly set forth in the Terms.

**THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES OF ANY NATURE WHATSOEVER. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BIOMÉRIEUX MAKES NO FURTHER, AND HEREBY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, ANY PRODUCT, SOFTWARE, THIRD PARTY SOFTWARE, THIRD PARTY LICENSES, OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INTERFERENCE, LACK OF INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES, OR WHICH MAY ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, OR REGARDING THE COMPATIBILITY OR INTEROPERABILITY OF THE PRODUCT, SOFTWARE, OR THIRD PARTY SOFTWARE WITH OTHER PERSONAL OR THIRD PARTY EQUIPMENT, LICENSES, DEVICES, PROPERTY OR ACCESSORIES WHICH CUSTOMER USES WITH OR CONNECTS TO THE PRODUCTS.**

## **9. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING IN THE TERMS, QUOTE, OR ANCILLARY AGREEMENT TO THE CONTRARY, BIOMERIEUX'S CUMULATIVE LIABILITY TO CUSTOMER, OR ITS EMPLOYEES, AGENTS, CUSTOMERS, OR INVITEES, OR ANY THIRD PARTIES, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR RELATED TO, WITHOUT LIMITATION, THE TERMS, QUOTE, ANCILLARY AGREEMENT, PRODUCTS, OR PRODUCT PERFORMANCE (EXCEPT AS EXPRESSLY STATED IN SECTION 8) SHALL BE EXPRESSLY LIMITED TO THE TOTAL SALES QUOTE AMOUNT PAID BY CUSTOMER FOR THE SPECIFIC SALES QUOTE FROM WHICH ANY CLAIM AROSE. NOTWITHSTANDING ANYTHING IN THE TERMS, ANY QUOTE, OR ANCILLARY AGREEMENT TO THE CONTRARY, BIOMERIEUX SHALL NOT BE LIABLE TO CUSTOMER, OR ITS EMPLOYEES, AGENTS, CUSTOMERS, OR INVITEES, OR ANY THIRD PARTIES, IN ANY INSTANCE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF GOODWILL OR OPPORTUNITY, OR ANY LOST PROFITS, LOSS OF ANY DATA OR USE, EVEN IF BIOMERIEUX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY MADE HEREIN. The limitations set forth in this section shall not apply with respect to: (i) injury to person and/or tangible property arising from the willful misconduct or gross negligence of bioMérieux; and (ii) fraud or to the extent such disclaimer is prohibited under applicable law. Customer acknowledges and agrees bioMérieux has entered into this Agreement in reliance upon the disclaimers of warranties and limitations of liability in the Terms and that the same form an essential basis of the bargain between the parties.

## **10. Software**

Customer shall ensure that any dangerous or malicious code, including all viruses, Trojan horse, or any other element of the same nature is not written, charged or introduced into Customer's environment or the Product. bioMérieux shall not be responsible for any contamination by virus, Trojan horses, or any other malicious code or element of a similar nature and reserves the right to bill any provision requested by the Customer as a result of such a contamination. bioMérieux may, at no charge and at its discretion, issue (a)

minor software updates that maintain existing capabilities and enable the Product to perform in accordance with the specifications; and (b) any software necessary to standardize the Product for service maintenance “Updates”). bioMérieux may also make available for purchase software updates that allow the Product to exceed performance specifications (“Upgrades”) at a price that is dependent upon the nature of the Upgrade. Customer accepts full responsibility to manage and maintain all critical operating system patches to minimize risk of exposure of the Product to cyber threats and latest Software updates, upon being provided with same by bioMérieux or the applicable third party. Customer acknowledges and agrees that bioMérieux may extract, from time to time, operational data from the Product in order to maximize Product operation. Operational data includes but is not limited to data that is collected for analytical, statistical, or benchmarking purposes and which does not permit the identification of individuals.

## **11. Regulatory**

It is not the purpose of this Agreement to induce or encourage the referral of patients or the payment, directly or indirectly, of any remuneration by one party to the other party in violation of applicable laws, rules, or regulations. Each party agrees that no part of the remuneration provided to the other party is a payment or inducement for, and is not in any way contingent upon, the admission or referral of any patient. bioMérieux shall comply with the reporting requirements of 42 C.F.R. § 1001.952(h), regarding “safe harbor” protection for discounts under the Medicare and Medicaid Fraud & Abuse law. bioMérieux shall disclose to Customer on each invoice, or as otherwise agreed, the amount of the discount or rebate. The statement shall inform Customer, of the amount of the discount or rebate so as to enable Customer to satisfy its obligations to report such discount or rebate to the government. bioMérieux and Customer represent that they have not been, nor are they about to be excluded from participation in the federal Medicare or Medicaid program, Maternal and Child Health Services Block Grant, Block Grants for Social Services, or State Children’s Health Insurance (collectively, “Federal Health Care Programs”) Each party agrees to notify the other promptly after receipt of final notice of exclusion from any Federal Health Care Program. To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the “Act”) and the regulations promulgated thereunder are applicable to the Terms, and until the expiration of four (4) years after the last sale of the Products pursuant to the Terms, bioMérieux shall make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of the Terms and any books, documents, records and other data of bioMérieux that are necessary to verify the nature and extent of the costs incurred by Customer in purchasing such Products. If bioMérieux carries out any of its duties under the Terms through a subcontract with a related organization involving a value or cost of ten thousand dollars (\$10,000) or more over a twelve-month period, bioMérieux shall cause such subcontract to contain a clause to the effect that, until the expiration of four (4) years after the last sale of the Products pursuant to such contract, the related organization shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of such contract and any books, documents, records and other data of said related organization that are necessary to certify the nature and extent of costs incurred by Customer in purchasing such Products. Customer will be solely responsible for reporting applicable discounts on its Medicaid/Medicare cost reports.

Each party hereto will comply with all laws, rules and regulations, including without limitation, all applicable laws and regulations regarding the collection, use and storage of protected health information (as defined in 45 C.F.R. 160.103), including the Health Insurance Portability and Accountability Act of 1996, as amended by (a) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, (b) Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5), (c) the Affordable Care Act of 2010; (d) the federal regulations published at 45 C.F.R. parts 160 and 164, and (e) any applicable state privacy and security laws regarding individually identifiable health information as applicable to the agreeing party, which relate this Agreement.

## **12. Force Majeure**

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

### 13. Miscellaneous Provisions

This Agreement may only be modified in a writing signed by Customer and bioMérieux which expressly states the intent to modify this Agreement. This Agreement, may not be transferred or assigned by Customer in whole or in part, to a third party, including an affiliate of Customer. Any attempted assignment or transfer shall be null, void, and invalid. bioMérieux may delegate, at its sole discretion, to any sales agent or distributor any and all of bioMérieux's duties pertaining to distribution of Products or related activities under the Agreement, so long as any such sales agent or distributor is authorized by bioMérieux. Each clause of this Agreement is distinct and severable. If any provision of this Agreement is declared unenforceable, the other provisions herein will remain in full force and effect. A waiver or modification by bioMérieux of any condition or obligation of Customer hereunder shall not be construed as a waiver or modification of any other condition or obligation and no such waiver or modification granted on any one occasion shall be construed as applying to any other occasion. Sections 1,2,9,10,11,12,14 of the Terms shall survive expiration or termination of the Agreement for whatever reason. This Agreement will be interpreted according to the laws of the State of North Carolina without application of conflict of laws principles.

#### *SERVICE AND MAINTENANCE LEVEL DESCRIPTIONS*

##### *MAINTENANCE SERVICE OPTIONS*

###### *Virtual Machine Annual Maintenance:*

The Virtual Machine Annual Maintenance covers all telephone support, labor, travel, and expenses for an unlimited number of telephone support calls, to the extent defined in the General Service Terms and Conditions. bioMérieux shall use commercially reasonable efforts to provide Customer on-site remedial maintenance during the stated coverage hours upon a determination by bioMérieux that an on-site visit is necessary. This Agreement also includes the recommended maintenance per year (see Quotation) and bioMérieux's remote diagnostics feature for troubleshooting (NOTE: remote access denial may result in additional service charges for unnecessary dispatches).

The extent of the level of the technical call center support is at the discretion of bioMérieux and does not include support such as, but not limited to, intensive data mining, training, LIS Support, or situations where dispatch is required. Initiation of coverage is subject to Section 3 "Product Eligibility".

**COVERAGE: 9:00AM – 5:30PM EST time in the Continental U.S., 5 Days a week excluding holidays. Technical Support Center Support 24 hours a day / 7 days a week.**

###### *Contact Information for Support:*

Technical Support Center: 1-800-682-2666

Data Analytics: (919)620-3387

[Analytics-Support@biomerieux.com](mailto:Analytics-Support@biomerieux.com)

###### *Billing Frequency Preference*

*Please check your billing frequency preference and return with the signed service contract and purchase order:*

Annual billing in advance

Quarterly Billing in Advance (Total must exceed \$4000.00)

Other billing frequency (Please describe below)

\_\_\_\_\_ (Subject to bioMérieux approval)

Please note: Monthly billing is not available

Bill address on quotation

Billing address is not the same as quotation

(Billing address is included on purchase order)

Fax to: (800) 654-4682; or Email: [CLARION@bioMerieux.com](mailto:CLARION@bioMerieux.com)