

BIOMÉRIEUX SERVICE TERMS AND CONDITIONS

By placing an order, the parties agree to these terms and conditions (“Terms”), which, together with any links or attachments incorporated by reference, constitute the entire agreement regarding the maintenance or repair service(s) described in the Service Coverage Level Details attached hereto and incorporated by reference, and/or as designated on the applicable service quote or provided estimate (“Service Quote”) (collectively the “Service(s)”). These Terms supersede any prior or conflicting agreements or documents, including any terms and conditions contained in a purchase order or other document submitted to bioMérieux, Inc. (“bioMérieux”) by Customer (as defined in the applicable Service Quote). bioMérieux reserves the right to reject any purchase order prior to acceptance for any reason. A purchase order is considered accepted by bioMérieux upon the earlier of: (a) bioMérieux providing written acknowledgment of acceptance to Customer or (b) the performance of the Services. “Agreement” means these Terms, the Service Quote, and any document signed by the parties referencing these Terms.

1. Term and Termination

This Agreement is effective from the start date listed in the Service Quote and continues for the term set forth therein (the “Term”). 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 Service Quote. Notice of termination by Customer shall be sent to: US.ServiceSales@biomerieux.com. In the event of termination, Customer will receive a refund for any prepaid Services attributable to periods beyond the then-current contract year. No refund will be issued for Services within the current contract year.

2. Instrument Eligibility

The Services provided under this Agreement apply only to the bioMérieux furnished instrument(s) listed in the applicable Service Quote (the “Instrument”). In the event there has been a period of more than thirty (30) days from the later of: (a) the last service event, (b) expiration of bioMérieux’s Standard Limited Warranty, or (c) expiration of previous service agreement, bioMérieux shall have the right to conduct a pre-contract qualification inspection of the Instrument, billable at the prevailing list price for a Preventive Maintenance visit (“PM”) plus any additional parts and labor required to bring the Instrument to manufacturer’s specifications prior to Customer enrolling in a service agreement. Instrument(s) purchased more than seven (7) years prior to the date of the Service Quote may be subject to additional charges at bioMérieux’s discretion which will be provided with Service Quote.

3. Payment Terms

Customer will pay for Services no later than thirty (30) days after the date of bioMérieux’s invoice, which will include all applicable taxes. If Customer is tax-exempt, Customer will provide bioMérieux with certification of its status. Payments are deemed made by Customer when received by bioMérieux. Unless approved in writing in advance by bioMérieux, invoices shall be paid by cash, check, or ACH. bioMérieux reserves the right to reject or accept credit card payments on a case-by-case basis.

4. Remote Services

Where applicable, bioMérieux hereby grants Customer non-exclusive, non-transferable, and limited access to VILINK® (“VILINK”) to assist with the following:

- A. Instrument Support. bioMérieux may remotely access the Instrument to (i) investigate, troubleshoot, diagnose, or resolve Instrument errors or performance issues, and (ii) provide training and assistance to Customer. Each VILINK remote access session can only be initiated upon Customer’s express authorization.
- B. Operational Data Management. bioMérieux may collect technical, operational, and other non-personal data related to the use or performance of the Instrument to monitor performance and for other related analytical, statistical, or benchmarking purposes. bioMérieux may use such non-personal data for (i) improving and enhancing products or Services, (ii) research and development related to new products, features, or services, and (iii) other internal business and operational purposes.
- C. Software Updates. bioMérieux may deliver patches, modifications, enhancements, corrections, and/or security improvements to the Instrument software (“Software Updates”). Customer shall be responsible to install Software Updates on the Instrument upon being provided the same by bioMérieux.
- D. Fees. Customer acknowledges failing to implement VILINK may, at bioMérieux’s discretion, result in an increase in Service costs, which will be detailed on the applicable Service Quote.

5. Customer Obligations

Customer shall:

- (a) when contacting bioMérieux’s technical support center, provide a plain summary of any Instrument errors or performance issues leading to a service event and otherwise assist in providing error information as reasonably requested by bioMérieux;
- (b) allow bioMérieux personnel access to the Instrument and any attached equipment during the coverage hours listed on the Service Quote (“Coverage Hours”);
- (c) follow bioMérieux’s pre-service instructions, provided to Customer before Service performance;
- (d) perform verification procedures and routine maintenance consistent with the Instrument user manual, instructions for use, and bioMérieux instructions;

- (e) not introduce any malicious code, computer viruses, or similar bugs to the Instrument; if re-imaging of an Instrument's computer is required due to malicious code, viruses, and/or similar bugs not introduced by bioMérieux, additional charges may apply;
- (f) keep a copy of Instrument passwords; if re-imaging of an Instrument's computer is required due to a lost password, additional charges may apply;
- (g) not allow any third-party to perform service(s) over the Instrument, unless authorized to do so by bioMérieux;
- (h) clean and disinfect the Instrument according to the Instrument user manual and industry standards; and
- (i) install updates and critical operating system patches on the Instrument, including Windows OS updates and updates provided by bioMérieux, to minimize the risk of cyber threats.

bioMérieux may assess additional fees, if necessary, to remedy Instrument errors caused by Customer's failure to meet these obligations. Such fees will be provided to Customer beforehand and are subject to mutual agreement before any remedy is performed. If Customer declines the proposed fees, bioMérieux may terminate this Agreement.

6. Service Coverage Level Description

Each Service Quote shall identify the Service Coverage Level purchased by Customer: (i) Full-Service Agreement, (ii) Preventative Maintenance ("PM") + Agreement, or (iii) Repair Center Contract. bioMérieux shall perform the Services in accordance with the terms applicable to the selected Service Coverage Level, as further described in Exhibit A attached hereto.

All Service Coverage Levels include software and firmware updates as released by bioMérieux. The Preventative Maintenance ("PM") schedule for specific Instruments is set forth in Exhibit A. The Full-Service Agreement includes all labor, travel, expenses, and replacement parts necessary to repair the Instrument(s) and restore them to manufacturer specifications, subject to any Service Exclusions and Customer Obligations. Customers located in Alaska and Hawaii are subject to additional charges, which will be provided with the applicable Service Quote. Replacement parts may be new or refurbished of equivalent quality, at bioMérieux's discretion. All parts removed from the Instrument(s) become the property of bioMérieux.

7. Service Exclusions

The Services expressly exclude, and bioMérieux has no obligation to service or repair Instrument(s), due to any of the following:

- (a) neglect or abuse operating the Instrument;
- (b) use of the Instrument for purposes other than for which it was designed;
- (c) operation of the Instrument in a facility that does not meet Instrument user manual requirements, including but not limited to lack of air conditioning, lack of humidity control, or improper electrical power;
- (d) failure to complete routine maintenance and sanitation set forth in the Instrument user manual;
- (e) repair, service, or alterations made or attempted by anyone other than bioMérieux's authorized personnel, including changes to manufacturer's physical, mechanical, and/or electrical design of the Instrument;
- (f) devices or attachments mechanically, electrically, or electronically connected to the Instrument without bioMérieux's express consent;
- (g) software not supplied by bioMérieux, including any consequences of its use;
- (h) any damage caused by computer viruses, Trojan horses, malicious code, or similar elements, except where introduced by bioMérieux;
- (i) relocation of the Instrument not performed or authorized by bioMérieux; and
- (j) damage caused by fire, flood, water, wind, lightning, earthquake, termination of or surge in electric current, and/or similar accidents or disasters.

This Agreement does not include (i) service and/or support on any LIS interface, customer network modification, etc... (unless otherwise agreed to in writing), (ii) replacement of consumable parts (i.e. batteries, lamps, bulbs, nozzles, or printer cartridges); or (iii) replacement of Instrument(s) due to obsolescence. bioMérieux has no obligation to replace an Instrument installed more than five (5) years ago if it cannot be repaired. bioMérieux has no obligation to repair or replace computer hardware installed on Instrument(s) that are more than three (3) years old, including computer hardware requiring replacement due to the end of support of the applicable operating system.

8. Customer Onsite Safety Policies

While performing Services at Customer's premises, bioMérieux personnel will follow Customer's reasonable, written safety policies, provided such policies are supplied to bioMérieux in advance of the visit. Both parties will cooperate in good faith to maintain a safe working environment.

9. Warranty

During the Term, bioMérieux will perform Services in accordance with the Terms herein. If any covered repair or service is performed during the final thirty (30) days of the Term, bioMérieux warrants that specific repair or service for an additional thirty (30) days from the date it is performed, even if the Service Agreement Term has expired. Customer's sole and exclusive remedy for a breach of this warranty is repair or replacement of the Instrument by bioMérieux.

THE WARRANTIES AND REMEDIES SET FORTH HEREIN 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, INSTRUMENT, 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, OR WHICH MAY ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, OR REGARDING THE COMPATIBILITY OR INTEROPERABILITY OF THE PRODUCT, INSTRUMENT, 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 INSTRUMENT(S).

10. Regulatory

Each party agrees to comply with all laws applicable to its business operations, in all material respects, including without limitation, all laws and regulations regarding the collection, use, and storage of health information, the Health Insurance Portability and Accountability Act of 1996, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, any regulations promulgated thereto, and all similar applicable state laws.

Each Party shall immediately notify the other 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 this Agreement, and until Agreement, and until the expiration of four (4) years after the end of the Term, 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 under this Agreement. 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 similar clause.

11. Limitation of Liability

- A. General Limitation. NOTWITHSTANDING ANYTHING IN THE TERMS, CUSTOMER DOCUMENTATION, SERVICE QUOTE, MASTER AGREEMENT OR ANY ANCILLARY AGREEMENT (COLLECTIVELY THE "DOCUMENTS") TO THE CONTRARY, BIOMÉRIEUX'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 SERVICES, THE DOCUMENTS, OR PRODUCT PERFORMANCE (EXCEPT AS EXPRESSLY STATED IN SECTION IN SUBSECTION (c) SHALL BE EXPRESSLY LIMITED TO THE GREATER OF (I) THE TOTAL AMOUNT CUSTOMER PAID TO BIOMÉRIEUX UNDER THIS AGREEMENT IN THE 12 MONTHS IMMEDIATELY BEFORE THE EVENT GIVING RISE TO THE CLAIM; OR (II) TWENTY-FIVE THOUSAND DOLLARS (\$25,000).
- B. Indirect, Special, and Consequential Damages. NOTWITHSTANDING ANYTHING IN THE DOCUMENTS TO THE CONTRARY, BIOMÉRIEUX 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 BIOMÉRIEUX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY MADE HEREIN.
- C. Exceptions to Limitations. 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, (ii) fraud, or (iii) 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.

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, hurricane, earthquake, severe weather, interruption of electrical supply to Customer's facilities, supplier-caused delays or shortages, pandemic, epidemic, or compliance with any law, regulation, embargo restrictions or order of any government body or instrumentality thereof. Performance shall be deemed suspended during said circumstances and extended for such time as said circumstances cause delay.

13. Miscellaneous Provisions

This Agreement may only be modified in a writing signed by the parties 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 without bioMérieux consent. Any attempted assignment or transfer shall be null, void, and invalid. 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. Any provision of these Terms that by its nature is reasonably intended to survive beyond the termination or expiration of this Agreement shall survive. The United Nations Convention on the International Sales of Goods will not apply to the transactions contemplated by this Agreement.

EXHIBIT A - SERVICE COVERAGE LEVEL DETAILS

Service Contract Inquiries: US.ServiceSales@bioMerieux.com

	FULL-SERVICE AGREEMENT	PREVENTATIVE MAINTENANCE + AGREEMENT	REPAIR CENTER CONTRACT*	BUSINESS HOURS FULL-SERVICE AGREEMENT
TECHNICAL SUPPORT - 1-800-682-2666				
Extended Hours - 24/7 telephone technical support, including during weekends and statutory holidays	✓	✓	✓	
Available M-F between 8:00 AM – 5:00 PM local time in the Continental U.S.,	✓		✓	✓
Remote diagnostics feature for troubleshooting instrumentation is included	✓	✓		✓
ONSITE SUPPORT				
Available between 7:00 AM – 7:00 PM local time in the Continental U.S., 7 days a week	✓			
Available M-F between 8:00 AM – 5:00 PM local time in the Continental U.S.,	✓			✓
24 Hours Response Time within commercially reasonable efforts during stated coverage hours	✓			✓
PREVENTATIVE MAINTENANCE (PM) – See Instrument Specifics Below				
Planned PM within twelve (12) months, during regular bioMérieux business hours, local time, Monday to Friday.	✓	✓		✓
SOFTWARE UPDATES				
Regular software updates for bug fixes or functionality improvements.	✓	✓	✓	✓
Software upgrades for new functionalities.	✓	✓	✓	✓
FIRMWARE UPDATES				
Firmware updates performed as required by bioMérieux.	✓	✓	✓	✓

***RCC: Only Available for PREVIColor and Mycoplasma**

- Replacements under RCC: Replacement Instrument shall be new standard or equivalent refurbished. Upon notification and authorization, bioMérieux will pay for all related transportation charges. bioMérieux will ship a replacement Instrument with all necessary parts and in turn the customer will return the malfunctioning Instrument and all parts provided per the return checklist, e.g. power cords, nozzles, dip tubes, and reagent trays. Customer is responsible for returning the malfunctioning Instrument, in its entirety, within 30 days of receipt of the replacement Instrument. Failure to return the malfunctioning Instrument, in its entirety, on time, will result in a penalty fee and/or this Agreement being terminated.

****PM DETAILS:**

- All Instruments receive one (1) Preventative Maintenance visit ("PM") per year, except for the following Instruments, which receive two (2) PM's per year: VITEK 2 (120 or above), VITEK REVEAL and D Count. Note that MYLA, PREVI COLOR 2 and MYCOPLASMA FA do not receive PMs.

ADDITIONAL CHARGES:

- Zone charges: Customers in AK and HI are subject to additional zone charges, which will be provided to Customer with the Service Quote.
- Remote access: Remote access denial may result in additional service charges for unnecessary dispatches.

Business Hours Full Service Additional Term:

- For the **D Count** Instrument, the Business Hours Full Service Agreement includes the entitlement for one (1) Key User per year during the service contract term to attend Key User training provided by bioMérieux at bioMérieux's training facilities, subject to execution by Customer of the Key User Training Agreement, which further defines the pre-requisites and conditions related to this training.