



BIOMÉRIEUX LABORATORY OPTIMIZATION SERVICES AGREEMENT

This bioMérieux Laboratory Optimization Services Agreement (the "Agreement"), effective as of the last date of signature below is between bioMérieux, Inc. ("bioMérieux") and _____ ("Customer") for Laboratory Optimization Services at the following location(s):

[LOCATIONS]

1. Laboratory Optimization Services in this Agreement include the following (please check applicable boxes):

	SERVICE NAME	SERVICE DESCRIPTION
<input type="checkbox"/>	CONTINUOUS IMPROVEMENT EVENT (KAIZEN)	Collaborative approach to find root causes of the current challenges (founded during the assessment phase) and define the most feasible ways to deploy countermeasures and implement them to get a new and improved process at the end of the week.
<input type="checkbox"/>	LAB PERFORMANCE ASSESSMENT	Assess Laboratory current state, looking for improvement opportunities that can lead to continuous improvement events or acquire a bioMérieux solution. As deliverable, it provides an action plan roadmap with quantified potential benefits.
<input type="checkbox"/>	LAB DESIGN ASSESSMENT	Design of a Lean laboratory that looks for the optimization of the laboratory resources (people, process and technology). It always includes a 2D and/or 3D Lab Layout)
<input type="checkbox"/>	WASPLAB CHANGE MANAGEMENT	Change management modules (based on serious game methodology) to support new WASP / WASPLab / Colibri / Phenomatrix users in the adoption of the new technology
<input type="checkbox"/>	MICROBIOLOGY WASPLAB DIAGNOSIS	Assess Laboratory's current state and design of a new Lean Lab introducing WASPLab technology. Looking for improvement opportunities that can lead to continuous improvement events once the integration of the technology has been done. As deliverable, it provides an action plan roadmap with quantified potential benefits coming from the WASPLAB Integration, as well as a (2D or/and 3D) Lean Layout.
<input type="checkbox"/>	CHANGE MANAGEMENT SERVICES	Change management module (based on serious game methodology) to support new bioMérieux Technology users in the adoption of the new instrument, when they have reluctance to change from competitor instrument (MAESTRIA, VITEK 2, VITEK MS PRIME)

- Price does not include implementation costs of any recommendations made during performances of the Services. Customer is solely responsible for the cost of implementing any recommendations. Customer may elect to implement recommendations made during the performance of the Services.
- The Services will occur on-site at Customer's laboratory as set forth above and shall not exceed five (5) days on-site at Customer's laboratory per Service. On-site duration for performance of the Service(s) may be extended by written agreement between Customer and bioMérieux.
- Customer LIS data, as outlined in Exhibit "A" attached hereto, shall be provided to bioMérieux ten (10) business days prior to the start date of Service(s). All Customer LIS data shall be delivered to bioMérieux in the form directed by bioMérieux and shall not contain any protected health information as such term is defined in HIPAA regulations 45 C.F.R. § 160 and 45 C.F.R. § 164.
- Immediately upon completion of services, bioMérieux shall provide Customer with proof of completion (the "Proof of Delivery Document").
- bioMérieux shall provide Customer a Final Report outlining the observations and recommendations made during the performance of the Service(s) (the "Final Report") within ten (10) business days after completion of the Service(s).

<signature page follows>

By signing below, Customer agrees to engage bioMérieux to perform the Service(s) subject to this Agreement and the Terms and Conditions, attached hereto and made a part hereof.

Customer:

_____Date:

Authorized representative of Customer

Print Name:

Title:

bioMérieux, Inc.:

_____Date:

Print Name:

Title:



Terms & Conditions – Laboratory Optimization Services

These terms and conditions (the “**Terms**”) govern all transactions between Customer and bioMérieux (as such are defined in Section 1), involving the provision of Laboratory Optimization Services. By executing the Laboratory Optimization Services Agreement (the “**Agreement**”), or accepting provision of the Services, Customer agrees to the Terms in full. If there is any discrepancy or conflict between the Terms and the Agreement, the Terms shall govern and control. 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.**

1.1 “**Applicable Laws**” shall mean any statute, law, ordinance, regulation, rule, code, treaty or binding legal precedent applicable in the relevant jurisdiction

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

1.3 “**Customer**” shall mean the entity or person(s) listed in the Agreement.

1.4 “**Confidential Information**” shall mean (i) the methodology, format and design of work product produced by bioMérieux, and (ii) all materials, data, strategies, systems, pricing or other information, relating to bioMérieux’s and/or its parent, related, affiliated or subsidiary companies’ products, business, know-how, materials and/or data, including but not limited to financial, marketing, technical, non-technical and/or scientific information.

1.5 “**Data**” shall mean all resulting de-identified data and information (including without limitation, written, printed, graphic, video, or audio material, and/or information contained in any computer database or computer readable form) provided by Customer to bioMérieux or generated in the course of conducting the Services.

1.6 “**Deliverable**” shall mean each item to be delivered by bioMérieux to Customer, as indicated in the Agreement.

1.7 “**Instrument**” means the equipment identified in the Sales Quote or which are otherwise ordered by Customer.

1.8 “**Instrument Go-Live Date**” shall refer to the date Customer put an Instrument in use for patient care.

1.9 “**Services**” shall mean those certain services to be performed by bioMérieux for Customer, as set forth in the Agreement.

2. **Services**

2.1 Services to be Performed

bioMérieux, or its designated agent, will perform the Service(s) described in the Agreement at the Customer’s facility for the purpose of identifying opportunities to improve efficiency and/or reduce costs. The Services will be provided as a temporary engagement at the location specified in the Agreement.

2.2 Deliverables

bioMérieux shall provide the Customer with documented findings and recommendations in accordance with the Agreement. The format and scope of Deliverables will be defined based on the agreed-upon Service(s) objectives.

2.3 Subcontractors

bioMérieux may, at its discretion, engage subcontractors to perform the Services, in whole or in part, without prior written consent from the Customer. Any subcontractor utilized will be required to adhere to the terms of this Agreement, and bioMérieux will remain responsible for their performance.

2.4 Customer Cooperation

To facilitate the successful completion of the Services, the Customer agrees to: (i) provide bioMérieux with necessary operational data and access to key personnel; (ii) ensure timely cooperation to prevent unnecessary delays; (iii) submit any requested information in the format specified by bioMérieux; and (iv) ensure any Customer-provided data does not contain any protected health information (PHI) as defined under 45 C.F.R. § 160 and 45 C.F.R. § 164.

3. Scheduling & Rescheduling

3.1 Scheduling

The parties shall mutually agree in writing upon a commencement date for the Service(s); provided, however, that such Service(s) must be scheduled to commence within: (i) three (3) months following the applicable Instrument Go-Live Date, where the Service(s) are purchased in conjunction with the procurement of an instrument; or (ii) three (3) months following the Effective Date of the Agreement, where the Service(s) are purchased independently. In the event that the Service(s) are not scheduled within the aforementioned timeframes, the Service(s) must be scheduled no later than nine (9) months from the applicable date referenced in (i) or (ii). Should the Service(s) remain unscheduled as of such nine (9)-month deadline, this Agreement shall automatically terminate without further action by either Party, and no refund or credit shall be due to Customer.

3.2 Rescheduling Requests

If Customer requests to reschedule the Service(s), such a request shall be made in writing. If the request is received by bioMérieux at least thirty (30) business days prior to the scheduled start date, the rescheduling shall be at no additional charge. If the request is received by bioMérieux between fifteen (15) and twenty-nine (29) business days prior to the scheduled start date, bioMérieux may, at its discretion, charge a rescheduling fee of up to five thousand dollars (\$5,000). If the request is received within fourteen (14) or fewer business days prior to the scheduled start date, bioMérieux may, at its discretion, charge a rescheduling fee up to ten thousand dollars (\$10,000).

3.3 Cancellations & No-Shows

If Customer cancels the Service(s), Customer shall remain liable for the full value of the Agreement. Any rescheduled Service(s) must be completed within sixty (60) days of the originally scheduled start date unless otherwise agreed to in writing by the parties. If Customer fails to reschedule the Services within this timeframe, Customer shall be responsible for the full value of the Agreement.

4. Payment

4.1 Payment

Customer will pay bioMérieux no later than thirty (30) days after the date of bioMérieux's invoice. The cost of implementation of any recommendations shall not be included in the invoice for Services.

4.2 Change In Scope

If Customer requests any changes in the nature or scope of the Services, bioMérieux will notify Customer of the cost of such revisions. bioMérieux will not proceed with Customer's requested revisions without Customer's prior written approval. Any such modified or additional Services provided by bioMérieux shall be governed by the terms and conditions of this Agreement, unless otherwise stated in a separate agreement for additional Services.

5. Proprietary Rights

5.1 Ownership

bioMérieux agrees that, as between bioMérieux and Customer, Customer will own all rights, title, and interest in any Data and all reports, power point presentations, analyses and other materials produced by bioMérieux specifically for Customer; however, Customer shall have no rights in the consulting methodology, format and design of work product produced by bioMérieux. Specifically, in providing the Services, bioMérieux will be using proprietary training materials and Customer shall have no right to use such materials.

5.2 Data License

Customer hereby grants to bioMérieux a non-exclusive, transferable license, with the right to sub-license, to use the Data, provided such use is consistent with Applicable Law including (i) to facilitate the provision of services governed by this Agreement, (ii) for research, development and continuous improvement of bioMérieux's products or services, and (iii) for bioMérieux's internal business and operational purposes.

6. Confidentiality

6.1 Confidential Information

Any Confidential Information acquired by Customer from bioMérieux, in whatever form, shall be kept confidential and shall not be used, published, or divulged by Customer to any other person, entity, firm, or corporation, or used in any advertising or promotion regarding this Agreement. Customer agrees (i) to take reasonable precautions similar to those that it would take to protect its own Confidential Information; and (ii) not to use the Confidential Information (except pursuant to this Agreement) or divulge to any third party any such Confidential Information with the exception of its legal representatives, agents, or counsel to the extent required for performance of duties. In the event of any breach of this section, bioMérieux shall be entitled, in addition to any remedies that it may have at law or in equity, to terminate this Agreement upon receipt of written notice to Customer.

Confidential Information does not include information which the Customer is able to demonstrate by documentary evidence: (i) was lawfully in the Customer's possession prior to receipt from bioMérieux; (ii) was in the public domain at the time of receipt from bioMérieux; (iii) becomes part of the public domain through no fault of Customer, its

directors, officers, employees or agents; or (iv) is lawfully received by Customer from a third party without an obligation of confidentiality to bioMérieux.

6.2 Disclosures Required by Law.

Notwithstanding the foregoing, Customer may disclose Confidential Information to the extent that is required to be disclosed to comply with Applicable Laws or with a court or administrative order, provided that the Customer gives bioMérieux prompt and reasonable notification of such requirement prior to such disclosure, takes all reasonable and lawful actions to obtain and implement confidential treatment for such disclosure, and to minimize the extent of such disclosure.

6.3 No License.

Neither anything herein contained nor any delivery of any Confidential Information to the Customer shall be deemed to grant to the Customer any rights or licenses under any patent applications or patents or to any know-how, technology, inventions or other intellectual property rights of bioMérieux.

6.4 Injunctive Relief.

To the extent permissible under Applicable Law, Customer and bioMérieux agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury and that, in the event of such breach, bioMérieux will be entitled, in addition to any other available remedies, to seek immediate injunctive and other related relief, without bond and without the necessity of showing actual monetary damages.

7. Data Privacy.

bioMérieux and Customer shall each comply with any and all Applicable Laws that apply in relation to any Data or personal data processed in connection with this Agreement (the "Protected Data"). Additionally, each party shall render such assistance and cooperation as is reasonably necessary or reasonably requested by the other party to ensure such party is in compliance with the Applicable Laws. In the event that either Customer or bioMérieux becomes aware of any unauthorized, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Protected Data, such party shall within ten (10) business days of discovery, notify the other in writing thereof and the parties shall take such action as the parties may deem reasonably necessary to prevent any further unauthorized, unlawful or dishonest conduct or activities or breach of the terms of this Agreement relating to Protected Data.

8. Warranty.

8.1 Mutual Warranties.

bioMérieux and Customer each represents, warrants, and covenants that: (a) it has the full power and authority to agree to the Agreement and to perform its obligations hereunder; and (b) its acceptance of and performance of the Agreement shall not breach any oral or written agreement with or obligation in favor of a third party.

THE WARRANTIES AND REMEDIES SET FORTH AND INCORPORATED BY REFERENCE IN THIS SECTION 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, REAGENT, INSTRUMENT, SOFTWARE, THIRD PARTY LICENSES, OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INTERFERENCE, LACK OF INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES, OR WHICH MAY ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, OR REGARDING THE COMPATIBILITY OR INTEROPERABILITY OF THE PRODUCT, INSTRUMENT, OR SOFTWARE WITH OTHER PERSONAL OR THIRD PARTY EQUIPMENT, LICENSES, DEVICES, PROPERTY, OR ACCESSORIES WHICH CUSTOMER USES WITH OR CONNECTS TO THE PRODUCTS.

9. Limitation of Liability.

A. General Limitation. NOTWITHSTANDING ANYTHING IN THE TERMS, CUSTOMER DOCUMENTATION, SALES 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 DOCUMENTS, PRODUCTS, OR PRODUCT PERFORMANCE (EXCEPT AS EXPRESSLY STATED IN SECTION 12) SHALL BE EXPRESSLY LIMITED TO THE PURCHASE PRICE PAID BY CUSTOMER IN CONNECTION WITH THE SPECIFIC PRODUCT(S) WHICH ARE THE PROXIMATE CAUSE OF ANY SUCH LIABILITY.

B. Indirect, Special, and Consequential Damages. NOTWITHSTANDING ANYTHING IN THE DOCUMENTS TO THE CONTRARY, SELLER 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 SELLER 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 Seller; (ii) fraud or (iii) to the extent such disclaimer is prohibited under applicable law. Customer acknowledges and agrees Seller has entered into this Agreement in reliance upon the disclaimers of warranties and limitations of liability in the Terms and that the same form an essential basis of the bargain between the parties.

10. Term and Termination.

10.1 This Agreement shall commence on the Instrument Go-Live date of applicable Instruments subject to a parallel sales contract between bioMérieux and Customer, unless earlier terminated in accordance with this Section, shall remain in effect until the Services have been completed.

10.2 bioMérieux may terminate this Agreement upon written notice to Customer if bioMérieux determines Customer is in poor financial condition. Customer shall be deemed to be in poor financial condition if (i) Customer becomes insolvent; (ii) is unable to pay its debts as they become due; or (iii) if Customer fails to meet any material financial obligation under this Agreement and such failure is not cured within fourteen (14) days after receiving written notice from bioMérieux.

10.3 Termination of Agreement by bioMérieux for Cause.

bioMérieux shall have the right to terminate this Agreement at any time following thirty (30) days prior written notice to Customer of a breach by Customer of any of its representations or obligations under this Agreement, including Customer's failure to meet any applicable deadlines established by the parties, unless such default is cured within such thirty (30) day period.

10.4 Termination of Agreement by bioMérieux for Convenience.

Without limiting the foregoing, bioMérieux may terminate this Agreement for convenience and without further liability to Customer upon thirty (30) days written notice. Upon termination for convenience, Customer will have no obligation to pay the Fee.

10.5 Effect of Termination of Agreement.

Upon expiration or termination of the Agreement bioMérieux shall cease to provide Services and, unless otherwise agreed in writing, Customer shall pay bioMérieux for Services provided, including any unrecoverable expenses incurred prior to expiration or termination.

11. Survival.

Notwithstanding the termination or expiration of this Agreement, the sections of this Agreement that by their nature should survive termination or expiration shall remain in full force and effect. Such sections include, but are not limited to, confidentiality obligations, indemnification, limitation of liability, and any other provisions that are intended to survive the termination or expiration of this Agreement.

12. Force Majeure.

bioMérieux shall not be liable to the other party or any third-party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, flood, natural disaster, earthquake, an act of terrorism, a war, a total or partial strike, an epidemic, pandemics, a total or partial interruption or blockade of telecommunications or electrical networks, or an act of computer piracy, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations. Performance shall be deemed suspended during said circumstances and extended for such time as said circumstances cause delay.

13. Miscellaneous.

13.1 Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, provided that Customer may not assign or transfer any or all of Customer's rights or obligations under this Agreement without the prior written consent of bioMérieux.

13.2 Independent Contractor.

It is expressly agreed that Customer and bioMérieux shall be independent contractors and that the relationship between the parties shall not constitute a partnership, joint venture or agency. Neither Customer nor bioMérieux shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other without the prior written consent of the other party to do so.

13.3 Severability.

If any provision of this Agreement shall be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall be deemed omitted from this Agreement, but the remaining provisions will continue in effect.

13.4 Governing Law and Venue.

This Agreement shall be governed by and construed in accordance with the substantive laws of the state of Utah without regard to any choice of law principle. Any action, suit or other legal proceeding which either party may commence to resolve any matter arising under or relating to any provision of this Agreement shall be commenced only in the state or federal courts located in Salt Lake City, Utah and the parties hereby consent to the jurisdiction of such court with respect to any such action, suit or proceeding.

13.5 Waiver.

Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

13.6 Counterparts.

The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument. Counterparts may be signed and delivered by facsimile or electronic transmission (including by e-mail delivery of .pdf signed copies), each of which will be binding when sent.



Exhibit A- LIS DATA

Fields	Description
Unique Identifier	Identification of the patient test or sample
Patient Location	Department, service, area or facility within the customer site for patient location or sample collection
Order Date/Time	Timestamp (date/time) when the order was initiated by care giver
Collect Date/Time	Collection timestamp (date/time) of the patient sample
Receive Date/Time	Date/time received in Main Lab and/or in Micro Lab
Test Code	Test order code
Test Name	Test order name (e.g. Urine culture, Blood culture, etc.)
Specimen Code	Specimen description code
Specimen Source	Source description (e.g. urine, tissue, etc.)
Preliminary Result	Text code (e.g. Gram stain, preliminary culture result)
Preliminary Result Date/Tim	Date/time of preliminary result entry
Final Result	Final results - both positive (with organism codes/names) results and negative results (e.g. No Growth)
Final Result Date/Time	Date/time of final result entry