

N 15



STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6503  
603-271-4612 1-800-852-3345 Ext. 4612  
Fax: 603-271-4827 TDD Access: 1-800-735-2964



Nicholas A. Toumpas  
Commissioner

Marcella J. Bobinsky  
Acting Director

November 24, 2015

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Sole Source

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division of Public Health Services, to exercise a renewal option and amend a **sole source** contract with bioMérieux, Inc., (Vendor #175653/R001) 100 Rodolphe Street, Durham NC 27712, by increasing the Price Limitation by \$82,556 from \$88,157.04 to \$170,713.04 to provide repair and service of laboratory instruments in the Public Health Laboratories, and extend the completion date from January 16, 2016 to January 16, 2019. This agreement was originally approved by Governor and Council on January 16, 2013, Item # 21. 100% Federal funds.

Funds to support this request are anticipated to be available in the following account in State FY 2016, State FY 2017, and State FY 2018, upon the availability and continued appropriation of funds in the future operating budget, with authority to adjust encumbrances between State Fiscal Years, through the Budget Office, without further approval from Governor and Executive Council, if needed and justified.

05-95-90-90-903010-5350 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, FED FDA MICRO

Fiscal Year	Class/Account	Class Title	Job Number	Current Modified Budget	Increased (Decreased) Amount	Total Amount
SFY 13	024-500225	Maintenance other than Building & Grounds	90069017	\$27,963.96	\$0	\$27,963.96
SFY 14	024-500225	Maintenance other than Building & Grounds	90069017	\$29,362.32	\$0	\$29,362.32
SFY 15	024-500225	Maintenance other than Building & Grounds	90069017	\$30,830.76	\$0	\$30,830.76
			Sub-Total	\$88,157.04	\$0	\$88,157.04

05-95-90-90-903010-8276 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS:  
 DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, FERN

Fiscal Year	Class/ Account	Class Title	Job Number	Current Modified Budget	Increased (Decreased) Amount	Total Amount
SFY 16	024-500225	Maintenance other than Building & Grounds	90069017	\$0	\$28,936	\$28,936
SFY 17	024-500225	Maintenance other than Building & Grounds	90069017	\$0	\$29,515	\$29,515
SFY 18	024-500225	Maintenance other than Building & Grounds	90069017	\$0	\$24,105	\$24,105
			Sub-Total	\$0	\$82,556	\$82,556
			Total	\$88,157.04	\$82,556	\$170,713.04

**EXPLANATION**

This is a **sole source** renewal because services on this system require a trained and authorized bioMérieux field service engineer, and parts are proprietary to the Contractor. This agreement provides critical repairs and service for the Vidas, and Vitek Laboratory Instruments.

Funds in this agreement will be used to provide continued repair and service to the bioMérieux instruments. These instruments provide rapid diagnostic capability to identify the infectious agent or toxin in a bioterrorism event and/or identification and characterization of an infectious microorganism in cases of contaminated food products and/or other specific disease outbreaks.

The Vidas instrument screens for pathogenic microorganisms such as E. coli 0157, Listeria, Salmonella, Campylobacter, Staphylococcus aureus and its toxins, in various food products. Two instruments are required to be able to test multiple different food products when the source of the outbreak is not yet known, along with the ability to test for more than one microorganism at the same time. This enables the Public Health Laboratories to provide a rapid response to a food poisoning outbreak or bioterrorism event.

The Vitek confirms the identification of the suspect microorganism found in the food product, environmental powder or patient sample. The Vitek can also identify which antibiotic will be effective in treating an individual infected with this microorganism.

Should Governor and Executive Council not authorize this Request, the lack of maintenance and repair may cause the bioMérieux instruments to be inoperable, leaving the Public Health Laboratories unable to analyze samples and determine the risk to the public or to participate in federal exercises that would expand the State's expertise and knowledge in food safety.

As referenced in the original Contract document, exhibit C, paragraph 3, Renewal section approved by Governor and Council on January 16, 2013, item #21, this sole source Agreement has the option to renew for three (3) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council. The Division is exercising this renewal option. These services were contracted previously with this vendor in State FY 2013, State FY 14, and State FY 15 in the amount of \$88,157.04.

The following performance measures will be used to measure the effectiveness of the agreement:

- One (1) mandatory on-site preventative visit per State Fiscal Year during the term of the contract to perform preventative maintenance.
- Unlimited visits for repair calls, with response within 24 hours; and
- Unlimited technical support by telephone.

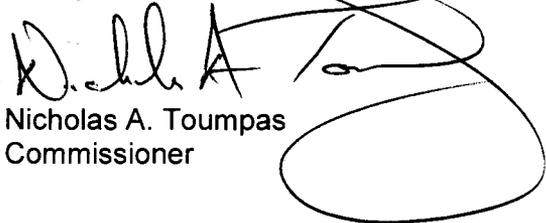
Area served: Statewide.

In the event that the Federal funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



Marcella J. Bobinsky  
Acting Director

Approved by: 

Nicholas A. Toumpas  
Commissioner



**State of New Hampshire  
Department of Health and Human Services  
Amendment #1 to the bioMérieux, Inc.**

This 1<sup>st</sup> Amendment to the bioMérieux, Inc., contract (hereinafter referred to as "Amendment #1") dated this 24<sup>th</sup> day of October, 2015, is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and bioMérieux, Inc., (hereinafter referred to as "the Contractor"), a corporation with a place of business at 100 Rodolphe St., Durham, NC 27712.

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council, on January 16, 2013 (Item # 21), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, the State and the Contractor have agreed to make changes to the scope of work, payment schedules and terms and conditions of the contract; and

WHEREAS, pursuant to the General Provisions, Paragraph 18, the State may modify the scope of work and the payment schedule of the contract by written agreement of the parties;

WHEREAS, all parties agree to amend, increase the price limitation, and extend the contract for three (3) years;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree as follows:

To amend as follows:

1. Form P-37, General Provisions, Item 1.7, Completion Date, to read:

January 16, 2019

2. Form P-37, General Provisions, Item 1.8, Price Limitation, to read:

\$170,713

3. Exhibit A, Scope of Services, to add:  
Exhibit A – Amendment #1

4. Exhibit B, Purchase of Services Contact Price, to add:  
Exhibit B – Amendment #1



New Hampshire Department of Health and Human Services  
bioMérieux, Inc. Amendment #1

5. Exhibit C, Special Provisions, to add:
  - Subparagraph 5. Pilot Program for Enhancement of Contractor Employee Whistleblower Protections
  
6. Exhibit G, Certification Regarding the Americans with Disabilities Act Compliance:
  - Delete Exhibit G, Certification Regarding the Americans with Disabilities Act Compliance

This amendment, Amendment #1, is effective on the date of Governor and Executive Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

9 Dec 2015

Date

Brook Dupee

Brook Dupee  
Bureau Chief

bioMérieux, Inc.

02 Nov 2015

Date

Dan Biondo

Name: DAN Biondo  
Title: V. P. Client Support Operations

Acknowledgement:

State of North Carolina, County of Durham on 02 Nov 2015, before the undersigned officer, personally appeared the person identified above, or satisfactorily proven to be the person whose name is signed above, and acknowledged that s/he executed this document in the capacity indicated above.

Tasha Skastner

Signature of Notary Public or Justice of the Peace

Tasha Skastner

Name and Title of Notary or Justice of the Peace



The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

12/21/15  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: Megan A. Lepp  
Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



Exhibit A – Amendment #1

**Scope of Services**

1. The Contractor shall provide Repair and Service for the Vidas and Vitek laboratory instruments, utilized by the Department of Health and Human Services (DHHS), Public Health Laboratories (PHL) in accordance to the following:

1.1. The Contractor Shall provide Repair and Service for the following System:

System Name	Serial Number
Vidas 30	IVD3002816
Vidas 30	511910
Vitek 2	VK2C5963

1.2. The contractor shall:

- 1.2.1. Provide unlimited technical phone support services during the agreement period.
- 1.2.2. Provide repair services during the agreement period.
- 1.2.3. Perform one (1) mandatory preventive maintenance (PM) visit each twelve month period (annually) for each system during the agreement period.
- 1.2.4. Provide inspection protocol during scheduled PM services and sticker for audit trail purposes.
- 1.2.5. Provide a PM Kit for each scheduled PM services.
- 1.2.6. PM calls shall be scheduled within two (2) weeks from request.
- 1.2.7. Provide a Field Service Engineer trained and/or authorized by bioMérieux services representative to perform all work at the PHL.
- 1.2.8. Provide services during PHL normal business hours (Monday through Friday, 8:00 AM to 4:30 PM, EST), excluding holiday recognized by the State of New Hampshire or the contractor, and at mutually agreed upon times.
- 1.2.9. Provide unlimited remote telediagnosics features for troubleshooting instrumentation with modem access and repair services..
- 1.2.10. Provide all labor, parts, travel expenses, and telephone assistance at no cost during the agreement period.



Exhibit A – Amendment #1

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- 1.2.11. Have no obligation to provide services with respect to:
  - a. Goods that have been subject to misuse, neglect, accident or improper application
  - b. Goods repaired or altered by non bioMérieux factory-trained services representatives
  - c. A result of acts of nature, war, act of foreign enemies, hostilities, failures of electricity, telephone service, or internet connections

1. Performance Measures:

- 1.1. One (1) mandatory on-site visit to perform preventive maintenance visit each twelve month period (State FY 2016, State FY 2017, and State FY 2018) for each system.
- 1.2. Unlimited emergency visits.
- 1.3. Unlimited technical support by telephone and/or email.



Exhibit B – Amendment #1

**Method and Conditions Precedent to Payment**

1. Funding source:
  - 1.1. This contract is funded with funds from the following Catalog of Federal Domestic Assistance (CFDA) numbers:
    - CFDA #93.448, 100% federal funds from the Food and Drug Administration (FDA), Food Emergency Response Network (FERN) Cooperative Agreement Program.
2. Payment for the services shall be paid in three (3) payments as follows:
  - 2.1. The first invoice shall be submitted by the contractor for payment of the fourth 12 month period, in the amount of \$28,936, within (30) days of approval of the contract Amendment #1 by Governor and Executive Council (G&C).
  - 2.2. The second invoice, in the amount of \$29,515, shall be submitted by the contractor for payment of the fifth 12-month period, eleven (11) months from the date of the first invoice.
  - 2.3. The third and final invoice, in the amount of \$24,105, shall be submitted by the contractor for payment of the fourth 12-month period, eleven (11) months from the date of the second invoice.
3. The State shall pay the Contractor an amount not to exceed the Price Limitation, block 1.8, for the services provided by the Contractor pursuant to Exhibit A, and Exhibit A - Amendment #1, Scope of Services.
4. The State shall make payment to the Contractor within thirty (30) days of receipt of the invoice.
5. The invoice shall be submitted, on Contractor letterhead, to the individual noted below:

NH Public Health Laboratories  
29 Hazen Drive  
Concord, NH 03301  
Attn: Mary J. Holliday
6. Payment will be made by the State of New Hampshire, subsequent to approval of the submitted invoice.



## Exhibit C – Amendment 1

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5. **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections:** The following shall apply to all contracts that exceed the Simplified Acquisition Threshold as defined in 48 CFR 2.101 (currently, \$150,000)

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO  
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND  
WHISTLEBLOWER PROTECTIONS**

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G

Contractor Initials CDJ

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

New Hampshire Department of Health and Human Services  
Exhibit G



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to comply with the provisions indicated above.

Contractor Name:

02 NOV 2015  
Date

Dan Biondo  
Name: DAN Biondo  
Title: V.P. Customer Support Operations

Exhibit G

Contractor Initials CD3

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BIOMERIEUX, INC. a(n) Missouri corporation, is authorized to transact business in New Hampshire and qualified on May 18, 1992. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 25<sup>th</sup> day of November, A.D. 2015

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



Corporate Certification

I, Steven P. Yova, Assistant Secretary of bioMérieux, Inc., a Missouri corporation (the "Company"), do hereby certify the following:

That Dan Biondo is the Vice President of Customer Support Operations for the Company, and pursuant to the By-Laws of the Company, Dan Biondo, by virtue of his office as Vice President, Customer Support Operations, is authorized and empowered to sign and enter into contracts on behalf of the Company; and

That the signature appearing below is the genuine signature of Dan Biondo, who is authorized to act on behalf of the Company as provided above.

Name: Dan Biondo

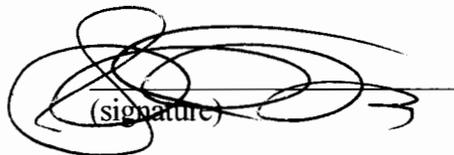
Title: Vice President, Customer Support Operations

  
(signature here)

That Dan Biondo is duly authorized and empowered for and on behalf of the Company and in its name to enter into service contracts with the State of New Hampshire on terms as may be agreed to between the State of New Hampshire and Dan Biondo on behalf of the Company; and

That Dan Biondo is authorized to act in accordance with this Certification until written notice of revocation or alteration of his authority is delivered by Company to the State of New Hampshire.

IN WITNESS WHEREOF, I have hereunto set my hand as such Assistant Secretary and affix the corporate seal of said corporation this the 16<sup>th</sup> day of November, 2015.

  
(signature)

(Corporate Seal)







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/28/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 701 Market Street, Suite 1100 St. Louis, MO 63101 Attn: stlouis.certrequest@marsh.com;f: 212-948-0811	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Zurich American Insurance Company</td> <td>16535</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Zurich American Insurance Company	16535	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :
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VI7177-biom-GL-15-16															
<b>INSURED</b> bioMerieux, Inc. 100 Rodolphe Street Durham, NC 27712															

**COVERAGES**      **CERTIFICATE NUMBER:** CHI-006395020-05      **REVISION NUMBER:** 4

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Retro Date: 3/1/12 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GLC4839862-04	12/31/2015	12/31/2016	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

### CERTIFICATE HOLDER

### CANCELLATION

Department of Health and Human Services Contracts and Procurement Unit 129 Pleasant Street Concord, NH 03301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/22/2015

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IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services South, Inc. Winston-Salem NC Office 1100 Reynolds Boulevard Winston-Salem NC 27105 USA	<b>CONTACT NAME:</b> PHONE (A.C. No. Ext): (866) 283-7122      FAX (A.C. No.): 800-363-0105 E-MAIL ADDRESS:														
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Travelers Casualty Ins Co of America</td> <td>19046</td> </tr> <tr> <td>INSURER B: Travelers Property Cas Co of America</td> <td>25674</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Casualty Ins Co of America	19046	INSURER B: Travelers Property Cas Co of America	25674	INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER E:															
INSURER F:															
<b>INSURED</b> bioMerieux, Inc. 100 Rodolphe St Durham NC 27712 USA															

Holder Identifier :

**COVERAGES**      **CERTIFICATE NUMBER: 570060612595**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.      Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/POP AGG
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			810-1E084067	01/01/2016	01/01/2017	COMBINED SINGLE LIMIT (Ea accident)      \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Comp & Coll Ded      \$1,000
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION						EACH OCCURRENCE AGGREGATE
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB1E351310	01/01/2016	01/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT      \$1,000,000 E.L. DISEASE-EA EMPLOYEE      \$1,000,000 E.L. DISEASE-POLICY LIMIT      \$1,000,000

Certificate No : 570060612595

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

Department of Health and Human Services Contracts and Procurement Unit 129 Pleasant Street Concord NH 03301 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Aon Risk Services South, Inc</i>
--	--



94(20)



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6527  
603-271-4661 1-800-852-3345 Ext. 4461  
Fax: 603-271-4760 TDD Access: 1-800-735-2964



Nicholas A. Toumpas  
Commissioner

José Thier Montero  
Director

December 7, 2012

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

APPROVED FIC	_____
DATE	_____
APPROVED G&C #	21
DATE	11/16/2013
NOT APPROVED	_____

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Public Health Services, Bureau of Laboratory Services, to enter into a sole source agreement with bioMérieux Inc. (Vendor #175653/R001), 100 Rodolphe St., Durham NC 27712, in the amount of \$88,157.04, to provide repair and service for the Vidas, Vitek and Diversilab laboratory instruments located at the Public Health Laboratories, to be effective for the duration of thirty-six months from the date of Governor and Council approval. Funds are available in the following accounts for SFY 2013, and are anticipated to be available in SFY 2014 and SFY 2015 upon the availability and continued appropriation of funds in the future operating budgets, with authority to adjust amounts if needed and justified between State Fiscal Years.

05-95-90-903010-5350 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS:  
DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, FED FDA MICRO.

Fiscal Year	Class/Object	Class Title	Job Number	Total Amount
SFY 2013	024-500225	Maintenance other than Building & Grounds	90069017	\$27,963.96
SFY 2014	024-500225	Maintenance other than Building & Grounds	90069017	\$29,362.32
SFY 2015	024-500225	Maintenance other than Building & Grounds	90069017	\$30,830.76
			Total	\$88,157.04

EXPLANATION

This agreement is requested as sole source as the bioMérieux Vitek, Vidas and Diversilab instruments are manufactured, sold and serviced exclusively by bioMérieux, Inc., the original equipment manufacturer. Maintenance and repair of the instruments can and must only be performed by a trained and authorized bioMérieux field service engineer.

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
December 7, 2012  
Page 2 of 3

Funds for this agreement will be used for thirty-six (36) months of service and repair coverage for bioMérieux instrumentation. The Public Health Laboratories employs five bioMérieux instruments: two Vidas, one Vitek, and two Diversilabs. These instruments provide rapid diagnostic capability to identify the infectious agent or toxin in a bioterrorism event, and the identification and characterization of an infectious microorganism in cases of contaminated food products, and/or specific disease outbreaks. These emergency situations require rapid testing with results available within 24 to 48 hours, therefore it is essential that these instruments be properly functioning and well maintained at all times.

The Vidas instrument finds pathogenic microorganisms such as E. coli O157, Listeria, Salmonella, Campylobacter, Staphylococcus aureus and its toxins, in various food products. Two instruments are required to be able to test multiple different food products when the source of the outbreak is not yet known, along with the ability to test for more than one microorganism at the same time. This enables the Public Health Laboratories to provide a rapid response to a food poisoning outbreak or bioterrorism event.

The Vitek confirms the identification of the suspect microorganism found in the food product, environmental powder or patient sample. The Vitek can also identify which antibiotic will be effective in treating an individual infected with this microorganism.

The Diversilab instrument provides the DNA "fingerprint" of the identified microorganism and allows Public Health to track down the source of the outbreak. The Diversilab provides DNA evidence that the infecting microorganism from the patient is a match to the microorganism found in the food product or the environmental sample. This tool is used to trace the source of the food poisoning all the way back to the farm if necessary. Two instruments are needed for backup should one break down, and allows the testing of multiple samples such as patient samples, food samples, and farm samples all at the same time to provide a rapid response to a food poisoning outbreak or bioterrorism event.

The bioMérieux instruments are used for routine, emergency testing and federal agencies' exercises and drills. The Department of Homeland Security has established the Food Emergency Response Network, which consists of Food and Drug Administration laboratories, U.S. Department of Agriculture laboratories, and state public health laboratories. The purpose of this network is to provide nationwide standardized laboratory testing for foods suspected of being intentionally contaminated. The New Hampshire Public Health Laboratories is a member of the Food Emergency Response Network and uses the standard procedures and instrumentation developed for the Food Emergency Response Network. Delays in reporting or the unavailability of an instrument could unacceptably delay necessary public health action and disqualify the State from participation in the Food Emergency Response Network, an important network that works to safeguard the nation's food supply.

Should Governor and Executive Council not authorize this Request, the instruments may become inoperable and the State would be unable to analyze samples and determine the risk to the public or to participate in federal exercises that would expand the State's expertise and knowledge in food safety.

This is the initial agreement with this Contractor for these services.

The following performance measures will be used to measure the effectiveness of the agreement. The vendor will provide:

- o One (1) on-site preventative maintenance visit each twelve-month period.
- o Unlimited emergency visits.
- o Unlimited technical support by telephone and /or email.

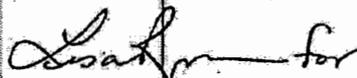
Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
December 7, 2012  
Page 3 of 3

Area served: Statewide.

Source of Funds: 100% Federal Funds from the Food and Drug Administration.

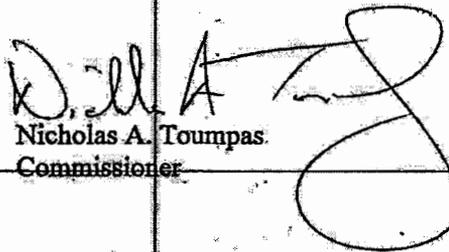
In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



José Thier Montero, MD  
Director

Approved by:



Nicholas A. Toumpas  
Commissioner

JTM/NAT/DT/sjw

Subject: bioMérieux - Service and Repair Agreement

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name NH Department of Health and Human Services Division of Public Health Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301-6504	
1.3 Contractor Name bioMérieux Inc.		1.4 Contractor Address 100 Rodolphe Street Durham, NC 27712	
1.5 Contractor Phone Number 919-620-2144	1.6 Account Number 05-95-90-903010-53500000-024-500225	1.7 Completion Date See Exhibit A-1	1.8 Price Limitation \$88,157.04
1.9 Contracting Officer for State Agency Joan H. Ascheim, Bureau Chief		1.10 State Agency Telephone Number 603-271-4501	
1.11 Contractor Signature <i>Dan Biondo</i> 10/12/12		1.12 Name and Title of Contractor Signatory EXECUTIVE DIRECTOR DAN BIONDO - VP Com ORS. SUPPORT	
1.13 Acknowledgement: State of <u>NC</u> , County of <u>Durham</u> On <u>10-12-12</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] <i>Faye L Brogden</i> Exp. March 18, 2013			
1.13.2 Name and Title of Notary or Justice of the Peace <i>Faye L Brogden</i>			
1.14 State Agency Signature <i>Joan H. Ascheim for</i>		1.15 Name and Title of State Agency Signatory Joan H. Ascheim, Bureau Chief	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <i>John P. Herwick</i> <i>John P. Herwick Attorney</i> On: <i>26 Nov. 2012</i>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

## 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, of all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

## 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each

certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

NH Department of Health and Human Services

Exhibit A  
Scope of Services

*Repair and Service Agreement*

**CONTRACT PERIOD:** For thirty-six (36) months from the date of approval by Governor and Council.

**CONTRACTOR NAME:** bioMérieux Inc.

**ADDRESS:** 100 Rodolphe St.  
Durham, NC 27712

**COMPANY CONTACT:** Sherry Hightower-Evans  
Service Solutions Sales Representative

**TELEPHONE:** 919-620-3190

**FAX:** 919-620-2897

**EMAIL:** sherry.hightower-evans@biomerieux.com

**VENDER #:** 175653/R001

This agreement covers the following systems:

System Name	Serial Number
Vidas	IVD3002816 ✓
Vidas	511910
Vitek	VK2C5963
Diversilab	DE72902282
Diversilab	DE34903911

The contractor shall provide:

1. Unlimited on-site repair services and toll-free telephone support – performed due to a system malfunction
  - I. Initial diagnostic services will be available during bioMérieux's normal business hours, (Monday through Friday, 7:00 AM to 5:00 PM EST) via telephone, e-mail or remote access.
  - II. The contractor will respond by telephone within one business day of the initial call for service. If the problem cannot be resolved over the phone then an on-site visit will be scheduled.
  - III. Labor, parts, travel expenses, and telephone assistance costs are no charge.
2. Preventive Maintenance (PM) – performed once each twelve month period for each system at a mutually convenient time
  - I. Field Service Engineer will clean, inspect, lubricate, adjust, repair and/or replace parts deemed necessary and perform all maintenance functions as noted in the owner's manual and recommended by the manufacturer.
  - II. Labor, parts, travel expenses, and telephone assistance costs are no charge.
  - III. Preventive maintenance will be performed during Public Health Laboratories' normal business hours (Monday – Friday, 8:00 AM to 4:30 PM EST).
3. All services will be performed by a Field Service Engineer trained by and/or authorized by bioMérieux Inc.

4. Service Plan includes a "qualification" service visit on any system that has been off warranty or service contract for over thirty days.
5. Service Plan to include software updates.

**Service Plan Exclusions:**

6. Abuse, misuse, modification, or mishandling of equipment; or damage due to causes beyond the selected contractor's control, including, without limitation, acts of God, flooding, power surges or failure, defective electrical work, environmental influences, deinstallation, reinstallation, unsupported computers or software, operator error, corrosive customer samples, non-contracted applications support, transportation, equipment or attachments supplied by other vendors, reagents, or communication lines.
7. Customer is responsible for providing consumable parts, operating supplies and other items, which by their nature or intended use, have a prescribed life.

**The remainder of this page is intentionally left blank**

**NH Department of Health and Human Services**

**Exhibit A-1  
Scope of Services**

**CONTRACT PERIOD:** For thirty-six (36) months from the date of approval by Governor and Council.

**CONTRACTOR NAME:** bioMérieux Inc.

**ADDRESS:** 100 Rodolphe St.  
Durham, NC 27712

**COMPANY CONTACT:** Sherry Hightower-Evans  
Service Solutions Sales Representative

**TELEPHONE:** 919-620-3190

**FAX:** 919-620-2897

**EMAIL:** sherry.hightower-evans@biomerieux.com

**VENDER #:** 175653/R001

**Form P37: Section 1.7 Completion Date:**

The completion date is thirty-six (36) months from the date of approval by the Governor and Council.

**The remainder of this page is intentionally left blank**

**NH Department of Health and Human Services**

**Exhibit B**

**Purchase of Services  
Contract Price**

*Repair and Service Agreement*

**CONTRACT PERIOD:** For thirty-six (36) months from the date of approval by Governor and Council.

**CONTRACTOR NAME:** bioMérieux Inc.  
**ADDRESS:** 100 Rodolphe St.  
 Durham, NC 27712  
**COMPANY CONTACT:** Sherry Hightower-Evans  
 Service Solutions Sales Representative  
**TELEPHONE:** 919-620-3190  
**FAX:** 919-620-2897  
**EMAIL:** sherry.hightower-evans@bioMérieux.com  
**VENDOR #:** 175653/R001  
**BIOMÉRIEUX CUSTOMER #** 80651

Job #90069017

Appropriation # 05-95-90-903010-5350-024-500225

1. The total amount of all payments made to the Contractor for cost and expenses incurred in the performance of the services during the period of the contract shall not exceed \$88,157.04. This contract is funded with 100% Federal Funds from the Food and Drug Administration (FDA) (CFDA # 93.103).

	Months of Coverage	1 - 12	13 - 24	25 - 36	Total
		SFY 2013	SFY 2014	SFY 2015	
System	Serial Number				
Vidas 30	IVD3002816	\$5,193.90	\$5,453.64	\$5,726.40	\$16,373.94
Vidas 30	511910	\$5,193.90	\$5,453.64	\$5,726.40	\$16,373.94
Vitek	VK2C5963	\$11,283.36	\$11,847.60	\$12,440.04	\$35,571.00
Diversilab	DE72902282	\$3,146.40	\$3,303.72	\$3,468.96	\$9,919.08
Diversilab	DE34903911	\$3,146.40	\$3,303.72	\$3,468.96	\$9,919.08
		\$27,963.96	\$29,362.32	\$30,830.76	\$88,157.04

2. The cost of the contract is based on a fee for three periods of coverage. Payment for each of the periods will be paid at the beginning of the period.
- a. The first invoice in the amount of \$27,963.96 shall be submitted by the contractor for payment of the first 12-month period, within thirty (30) days of approval of the contract by the Governor and Council (G&C).
  - b. The second invoice, in the amount of \$29,362.32, shall be submitted by the contractor for payment of the second 12-month period, eleven (11) months from the date of approval of the contract by the Governor and Council (G&C).

c. The third and final invoice, in the amount of \$30,830.76, shall be submitted by the contractor for payment of the third 12-month period, twenty three (23) months from the date of approval of the contract by Governor and Council (G&C).

3. Invoices shall be submitted, on Contractor letterhead, to the individual noted below:

NH Public Health Laboratories

29 Hazen Drive

Concord, NH 03301

Attn: Mary J. Holliday

**The remainder of this page is intentionally left blank.**

NH Department of Health and Human Services

Exhibit C

SPECIAL PROVISIONS

1. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.
2. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services prior to the Effective Date of the Contract.
3. **Renewal:** This Agreement has the option to renew for three (3) additional years, pending availability of funding, the agreement of the parties, and approval by Governor and Council.
4. **Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is replaced as follows:** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account, in the event funds are reduced or unavailable.

The remainder of this page is intentionally left blank.

NH Department of Health and Human Services

Exhibit C - 1

SPECIAL PROVISIONS

The parties agree to the following amendments to the General Provisions of the Agreement:

Section 5.3 of the Agreement shall be deleted in its entirety.

Section 9 of the Agreement shall be deleted in its entirety

Section 13 of the Agreement shall be amended to state the following:

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, to the extent arising out of the negligent acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein shall be deemed to constitute a waiver of the sovereign immunity of the State. Further, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) HOWEVER BASED. This covenant contained in paragraph 13 shall survive the termination of this Agreement.

The following terms and conditions are hereby added to the Agreement:

It is expressly understood and agreed between the Parties that the warranty stated above is the sole warranty made by BIOMÉRIEUX. BIOMÉRIEUX MAKES NO WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE MATERIAL SUPPLIED HEREUNDER. The remedies provided for in this section "Limited Warranty - Liability" shall be exclusive and shall be the Customer's sole remedies.

Standard Exhibit D

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act to 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-51-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), the January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691); and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630 of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services,  
129 Pleasant Street  
Concord, NH 03301

- 1) The grantee certifies that it will or will continue to provide a drug-free workplace by:
  - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employee's about:
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
    - (1) Abide by the terms of the statement; and

- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted
- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- 2) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, State, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

bioMérieux Inc. From: For thirty-six (36) months from the date of approval by Governor and Council  
 Contractor Name Period Covered by this Certification

DAN BIONDO Executive Director Customer Support Operations  
 Name and Title of Authorized Contractor Representative

  
 Contractor Representative Signature 10/12/12  
Date



NH Department of Health and Human Services

Standard Exhibit F

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions, execute the following Certification:

Instructions for Certification

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntary excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rule implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", "provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.

**PRIMARY COVERED TRANSACTIONS**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. have not within a three-year period preceding this proposal (contract) been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1 b of this certification; and
  - d. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

**Lower Tier Covered Transactions**

By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).

The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Dan Biondo  
Contractor Signature

Executive Director Customer Support Operations  
Contractor's Representative Title

Dan Biondo  
Contractor Name

10/12/12  
Date

NH Department of Health and Human Services

Standard Exhibit G

CERTIFICATION REGARDING THE AMERICANS WITH DISABILITIES ACT COMPLIANCE

The contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

Dan Biondo  
Contractor Signature

Executive Director Customer Support Operations  
Contractor's Representative Title

Dan Biondo  
Contractor Name

10/12/12  
Date

NH Department of Health and Human Services

STANDARD EXHIBIT H

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Dan Biondo  
Contractor Signature

Executive Director  
Customer Support Operations  
Contractor's Representative Title

Dan Biondo  
Contractor Name

10/12/12  
Date

**NH Department of Health and Human Services**

**STANDARD EXHIBIT I**  
**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

**Exhibit I- Health Insurance Portability and Accountability Act, Business Associate Agreement does not apply to this contract.**

**The remainder of this page is intentionally left blank.**

NH Department of Health and Human Services

STANDARD EXHIBIT J

CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND  
TRANSPARENCY ACT (FFATA) COMPLIANCE

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (*Reporting Sub-award and Executive Compensation Information*), the Department of Health and Human Services (DHHS) must report the following information for any sub-award or contract award subject to the FFATA reporting requirements:

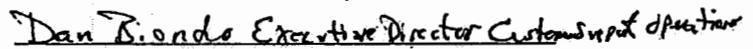
- 1) Name of entity
- 2) Amount of award
- 3) Funding agency
- 4) NAICS code for contracts / CFDA program number for grants
- 5) Program source
- 6) Award title descriptive of the purpose of the funding action
- 7) Location of the entity
- 8) Principle place of performance
- 9) Unique identifier of the entity (DUNS #)
- 10) Total compensation and names of the top five executives if:
  - a. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
  - b. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

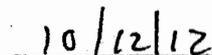
The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (*Reporting Sub-award and Executive Compensation Information*), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

  
\_\_\_\_\_  
(Contractor Representative Signature)

  
\_\_\_\_\_  
(Authorized Contractor Representative Name & Title)

  
\_\_\_\_\_  
(Contractor Name)

  
\_\_\_\_\_  
(Date)

NH Department of Health and Human Services

STANDARD EXHIBIT J

FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: 080785110

2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements?

NO

YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

NO

YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name:

Amount:

Name:

Amount:

Name:

Amount:

Name:

Amount:

Name:

Amount:

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BIOMERIEUX, INC. a(n) Missouri corporation, is authorized to transact business in New Hampshire and qualified on May 18, 1992. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 28<sup>th</sup> day of August, A.D. 2012

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

B I O M É R I E U X

CORPORATE CERTIFICATION

I, Stephen P. Yova, Assistant Corporate Secretary of bioMérieux, Inc., a Missouri corporation (the "Company"), do hereby certify the following:

That Dan Biondo is the Executive Director, Customer Support Operations for the Company, and pursuant to the By-Laws of the Company, Dan Biondo, by virtue of his office as Executive Director, Customer Support Operations, is authorized and empowered to sign and enter into contracts on behalf of the Company; and

That the signature appearing below is the genuine signature of Dan Biondo, who is authorized to act on behalf of the Company as provided above.

Name: Dan Biondo

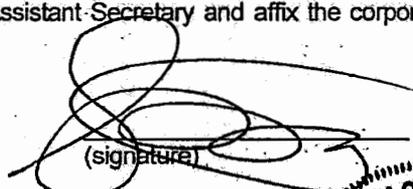
Title: Executive Director Customer Support Operations

  
(signature here)

That Dan Biondo is duly authorized and empowered for and on behalf of this corporation and in its name to enter into service contracts with the State of New Hampshire on terms as may be agreed to between the State of New Hampshire and Dan Biondo on behalf of the Company; and

That Dan Biondo is authorized to act in accordance with this Certification until written notice of revocation or alteration of his authority is delivered by Company to the State of New Hampshire.

IN WITNESS WHEREOF, I have hereunto set my hand as such Assistant Secretary and affix the corporate seal of said corporation this the 30<sup>th</sup> day of August, 2012.

  
(signature)

(Corporate Seal)





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/12/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 701 Market Street, Suite 1100 St. Louis, MO 63101 Attn: stlouis.certrequest@marsh.com; f: 212-948-0811	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
	<b>INSURER(S) AFFORDING COVERAGE</b>	
VI7177-bio-GLU-12-13	<b>INSURER A:</b> Zurich American Insurance Company	NAIC # 16535
<b>INSURED</b> bioMerieux, Inc. 100 Rodolphe Street Durham, NC 27712	<b>INSURER B:</b> Zurich Global Ltd	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** CHI-004472119-03                      **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			GLC483986200	03/01/2012	03/01/2013	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
	Retro Date: 3/1/12						PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS		PROPERTY DAMAGE (Per accident) \$				
			\$				
B	UMBRELLA LIAB			7400021364	03/01/2012	03/01/2013	EACH OCCURRENCE \$ 10,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 10,000,000
	DED						\$
	RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						OTHER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

<b>CERTIFICATE HOLDER</b> State of NH Public Health Lab 29 Hazen Dr. Concord, NH 03301	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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