

Appendix 1 PHE Public Health Microbiology Framework Agreement Order Form

(in accordance with NHS Framework Agreement for the Supply of Goods (August 2014) – Appendix A – Call-off Terms and Conditions for the Supply of Goods / Services)

FROM

Participating Authority:	The Secretary of State for Health and Social Care acting as part of the Crown Public Health England of 133-155 Waterloo Road, London, SE1 8UG ("the Authority") (hereinafter referred to as 'PHE')
Service address:	As per PHE official purchase order
Invoice address:	PHE Accounts Payable Team Financial Accounting Services PHE Proton Down, Manor Farm Road Salisbury, Wiltshire SP4 0JG United Kingdom Email: payables@phe.gov.uk
PHE Procurement Lead:	Name: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]
PHE Supplier Relationship Manager (SRM):	Name: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED] E-mail: [REDACTED]
PHE Internal Reference	To be quoted on all correspondence relating to this Order: ECM 7311

TO

Supplier Name:	BioMerieux UK Limited , Grafton Way, Basingstoke, Hampshire, RG22 6HY
Contact Name:	[REDACTED]
E-mail:	[REDACTED]
Telephone number:	[REDACTED]

1. CONTRACT DETAILS
<p>(1.1) Goods and/or Services [and deliverables] required:</p> <p>The contract includes Equipment, consumables, reagents and maintenance. This contract is for the purchase of the following:</p> <ul style="list-style-type: none"> • 7 TORCH 4 Systems comprising of one base unit, four instrument modules ([REDACTED]) • 4705455 -- L2-Maint. Contract Filmarray Torch 4 • 423740 --BioFire FilmArray RP2.1 Plus Panel • 2301653 -- TRAINING FILM ARRAY START UP ON SITE. A 2-3 hour routine user training course for 2-4 people at PHE facility. The training will cover routine operation of the system, user maintenance and first line troubleshooting. Training

for additional personnel, either at the time of initial key-user training or subsequently, is available on request charged at the prevailing rate.

Full details of the order in **Annexure 1**, as per the quote, reference number: **Q25613, QS26355 and QPW200526002** (*but excluding any Supplier terms and conditions referred to therein*).

These quotations refer to initial orders, additional supplies can be incorporated provided that the total value of the contract is no more than £9 m (exc. VAT)

All related goods and services covered will be supplied under:

Appendix A i – Call-off Terms and Conditions for the Supply of Goods

Appendix A_II – Call-off Terms and Conditions for the Provision of Services

(1.2) Contract Start Date: 22nd April 2020

(1.3) Contract Value (and breakdown if applicable):

£ 9,000,000.00 Ex VAT

(1.4) Contract End Date: 21st April 2021

(1.5) Contract Extension Options:

2. ADDITIONAL REQUIREMENTS

(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:

- i. The Supplier shall deliver, install and commission the FILMARRAY® TORCH 4 platforms (the "Equipment") no later than 30/06/2020 (the "Due Date") at the following specified laboratory locations specified in clause 3.3 of this contract. Time is of the essence for the Supplier's performance of its obligations under this paragraph (i) by the Due Date.
- ii. For the avoidance of doubt, Public Health England shall pay for any Equipment delivered, installed and commissioned by the Due Date and reserves the right to cancel outstanding orders for any Equipment (including any associated maintenance services) not delivered, installed and commissioned by the Due Date.
- iii. The Contract is made up of the following documents:
 - a) This Form of Contract for PHE_Scientific_Capital Purchase of Filmarray Torch-4 Biomerieux platforms
 - b) Schedule 1: Public Health Microbiology Framework Agreement Call-off Terms and Conditions for Provision of Service and Call-off Terms and Conditions for the Supply of Goods

<p> c) Schedule 2: Public Health Microbiology Framework Agreement Terms and Conditions d) Schedule 3: Specification for project 2415 itt_2949 -PHE_Scientific Framework e) Schedule 4: Contractor’s proposal, clarifications via mails, and charges. </p> <p>(All of the above documents taken together (as amended in accordance with this Contract) being referred to as the “Contract”).</p> <p>4. If there is an inconsistency between any of the documents listed above, a higher listed document shall prevail over a lower listed document, i.e. Order of precedence of document will be as follow (a) shall prevail over all other documents; document (b) shall prevail over documents (c) shall prevail over documents (e) and then (d).</p>
<p>(2.2) Variations to Call-off Terms and Conditions for the Supply of Goods:</p> <p>To reflect updated statutory requirements and also to exclude knowable effects of the COVID-19 pandemic, the parties have agreed to certain amendments to the Call-Off Terms and Conditions for Goods and the Call-off Terms and Conditions for the Provision of Services, as set out in Annexure 2 to this Order Form.</p>

<p>3. GOODS AND/OR SERVICES REQUIREMENTS (fill in if applicable)</p>
<p>(3.1) Key personnel of the Supplier to be involved in the Services [and deliverables]:</p> <p>██████████</p>
<p>(3.2) Performance standards:</p> <p>As agreed between the Supplier and PHE.</p>
<p>(3.3) Location(s) at which the Services are to be provided:</p> <p>It is a nationwide contract. Current locations are:</p> <ul style="list-style-type: none"> • Manchester • Newcastle • Leeds • Southampton • Bristol • Birmingham • Cambridge
<p>(3.4) Quality standards:</p> <p>As agreed between the parties.</p>
<p>(3.5) Contract monitoring arrangements:</p> <p>Quarterly review meetings to be organised between the Supplier and PHE. Key account manager (or deputy) from Biomerieux to attend the meetings.</p>

(3.6) Management Information and meetings
Quarterly review meeting to be organised between the Supplier and PHE. Management information on the orders and projects will be discussed in this meeting as well as the key performance indicators.

4. CONFIDENTIAL INFORMATION (if applicable)
(4.1) The following information shall be deemed Confidential Information: N/A.
(4.2) Duration that the information shall be deemed Confidential Information: N/A.

Annexure 1



[REDACTED]
PHE Cambridge
National Infection Service
Microbiology Department
Hills Road
Cambridge CB2 2QQ
Cambridgeshire
United Kingdom

Quote number: 25613
Date: Wednesday, 22 April 2020
Quotation valid until: Saturday, 23 May 2020
Your customer number: 0001006324
Contact: [REDACTED]
Phone: [REDACTED]
Email: [REDACTED]

TORCH 4 Capital Purchase

Thank you for your interest in bioMérieux. Please find below our proposal for your consideration. Should you require any further information or assistance, please do not hesitate to contact me.

#1 - TORCH 4 - Capital Purchase

Contract type	Capital Purchase
Contract duration (reagents & service)	36 months
Equipment included:	
1 x TORCH System comprising:	
One base unit	
Four instrument modules	
Warranty duration	12 months
TORCH 4	List price: [REDACTED] Offer price: [REDACTED]
Price start date (reagents & services)	22/04/20
Price renewal date (reagents & services)	21/04/21

Additional Items

Item	Description	Quantity	Unit Price	Total Price
4705457	L2-MAINT. CONTRACT FILMARRAY TORCH 4	1 / year	[REDACTED]	[REDACTED]
2301653	TRAINING FILM ARRAY START UP ON SITE A 2-3 hour routine user training course for 2-4 people at your facility. The training will cover routine operation of the system, user maintenance and first line troubleshooting Training for additional personnel, either at the time of initial key-user training or subsequently, is available on	1	[REDACTED]	[REDACTED]



Public Health England

Quote number: 26355
 Date: Tuesday, 26 May 2020
 Quotation valid until: Friday, 26 June 2020
 Your customer number: 0001006711
 Contact: [REDACTED]
 Phone: [REDACTED]
 Email: [REDACTED]

PHE TORCH 4 Proposals

Thank you for your interest in bioMérieux. Please find below our proposal for your consideration. Should you require any further information or assistance, please do not hesitate to contact me.

#1 - 6 x BioFIRE TORCH 4 Systems

Contract type	Capital Purchase
Contract duration (reagents & service)	12 months
Equipment included:	
6 x TORCH System comprising:	
One base unit	
Four instrument modules	
Warranty duration	12 months
TORCH 4	
	List price: [REDACTED]
	Offer price [REDACTED]
Price start date (reagents & services)	26/05/20
Price renewal date (reagents & services)	25/05/21

Additional Items

Item	Description	Quantity	Unit Price	Total Price
4705457	L2-MAINT. CONTRACT FILMARRAY TORCH 4	6	[REDACTED]	[REDACTED]
2301653	TRAINING FILM ARRAY START UP ON SITE A 2-3 hour routine user training course for 2-4 people at your facility. The training will cover routine operation of the system, user maintenance and first line troubleshooting Training for additional personnel, either at the time of initial key-user training or subsequently, is available on	6	[REDACTED]	[REDACTED]

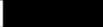
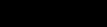
26 May 2020


Public Health England
Centre for Infections
61 Colindale Avenue
London
NW9 5EQ

Quotation number: PW200526002

Call off - new

Reagents

Product code	Description	Pack size	Price	Qty	Total
423740	BioFire FilmArray RP2.1 Plus Panel	30 tests			

Annexure 2

The Parties agree the following amendments to the Framework Call-Off Terms and Conditions for the Supply of Goods:

Appendix Ai – Call Off Terms and Conditions for the Supply of Goods

Schedule 2 Clause 1.7	The cross-reference to Clause 1.5 shall be amended to cross-refer to Clause 1.6.
Schedule 2 Clause 10.1.31	A new clause 10.1.31 shall be inserted as follows: “it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;”
Schedule 2 Clause 10.1.32	A new clause 10.1.32 shall be inserted as follows: “it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority that is notified to the Supplier and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier’s compliance with this Clause 10.1.32 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.”
Schedule 3 Clause 2.1	The existing clause 2.1 shall be removed and replaced as follows: “The Parties each acknowledge and agree that they may need to undertake Processing of Personal Data relating to each Party’s representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Goods; (b) request and receive the Goods; (c) compile, dispatch and manage the payment of invoices relating to the Goods; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Goods; and (f) comply with their respective regulatory obligations. Processing of Personal Data relating to each Party's representatives for the purposes set out above shall only be done by each Party in accordance with their respective

	<p>privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed above, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.”</p>
<p>Schedule 4 clause 1.1 “Contracting Authority”</p>	<p>The existing definition shall be amended to read as follows: “means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;”</p>
<p>Schedule 4 clause 1.1 “Controller”</p>	<p>A new definition shall be inserted as follows: “shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);”</p>
<p>Schedule 4 clause 1.1 “Data Protection Legislation”</p>	<p>The existing definition shall be amended to read as follows: “means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy including where applicable guidance and codes of practice issued by the Information Commissioner;”</p>
<p>Schedule 4 clause 1.1 “Data Subject”</p>	<p>The existing definition shall be amended to read as follows: “shall have the same meaning as given to it in the Data Protection Legislation;”</p>
<p>Schedule 4 clause 1.1 “Force Majeure Event”</p>	<p>Paragraph (i) of the existing definition shall be renamed paragraph (j) and a new paragraph (i) shall be inserted to read as follows: “(i) pandemic (excluding COVID-19 and any related circumstances, events, changes or requirements but this exclusion shall only apply to the extent that the same (aa) is, or ought to have been, known to the affected Party as at the Commencement Date; and (bb) is within the reasonable control of the affected Party); and“</p>
<p>Schedule 4 clause 1.1 “Personal Data”</p>	<p>The existing definition shall be amended to read as follows: “shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);”</p>
<p>Schedule 4 clause 1.1 “Process”</p>	<p>The existing definition shall be amended to read as follows: “shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679) and for the purposes of this Contract shall include both manual and automatic processing. “Processing” and “Processed” shall</p>

	be construed accordingly;”
Schedule 4 clause 1.1 “Sensitive Personal Data”	The existing definition shall be removed and replaced as follows: “means special categories of personal data as defined in the Data Protection Legislation;”

The Parties agree the following amendments to the Framework Call-Off Terms and Conditions for the Provision of Services:

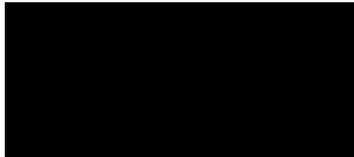
Appendix Aii – Call Off Terms and Conditions for the Provision of Services

Schedule 2 Clause 10.1.25	A new clause 10.1.25 shall be inserted as follows: “it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;”
Schedule 2 Clause 10.1.26	A new clause 10.1.26 shall be inserted as follows: “it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority that is notified to the Supplier and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier’s compliance with this Clause 10.1.26 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.”
Schedule 3 Clause 2.1	The existing clause 2.1 shall be removed and replaced as follows: “The Parties each acknowledge and agree that they may need to undertake Processing of Personal Data relating to each Party’s representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Services; (b) request and receive the Services; (c) compile, dispatch and manage the payment of invoices relating to the Services; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Services; and (f) comply with their respective regulatory obligations.

	<p>Processing of Personal Data relating to each Party's representatives for the purposes set out above shall only be done by each Party in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed above, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation."</p>
Schedule 4 clause 1.1 "Contracting Authority"	<p>The existing definition shall be amended to read as follows:</p> <p>"means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;"</p>
Schedule 4 clause 1.1 "Controller"	<p>A new definition shall be inserted as follows:</p> <p>"shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);"</p>
Schedule 4 clause 1.1 "Data Protection Legislation"	<p>The existing definition shall be amended to read as follows:</p> <p>"means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy including where applicable guidance and codes of practice issued by the Information Commissioner;"</p>
Schedule 4 clause 1.1 "Data Subject"	<p>The existing definition shall be amended to read as follows:</p> <p>"shall have the same meaning as given to it in the Data Protection Legislation;"</p>
Schedule 4 clause 1.1 "Force Majeure Event"	<p>Paragraph (i) of the existing definition shall be renamed paragraph (j) and a new paragraph (i) shall be inserted to read as follows:</p> <p>"(i) pandemic (excluding COVID-19 and any related circumstances, events, changes or requirements but this exclusion shall only apply to the extent that the same (aa) is, or ought to have been, known to the affected Party as at the Commencement Date; and (bb) is within the reasonable control of the affected Party); and"</p>
Schedule 4 clause 1.1 "Personal Data"	<p>The existing definition shall be amended to read as follows:</p> <p>"shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);"</p>
Schedule 4 clause 1.1 "Process"	<p>The existing definition shall be amended to read as follows:</p> <p>"shall have the same meaning as set out in the General Data</p>

	Protection Regulation (Regulation (EU) 2016/679) and for the purposes of this Contract shall include both manual and automatic processing. “Processing” and “Processed” shall be construed accordingly;”
Schedule 4 clause 1.1 “Sensitive Personal Data”	The existing definition shall be removed and replaced as follows: “means special categories of personal data as defined in the Data Protection Legislation;”

Signature



For and on behalf of the Authority

Name:

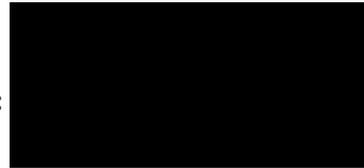


Job Title:



Date: 05/06/2020

Signature:



For and on behalf of the Contractor

Name:



Job Title:



Date: 03/06/2020