

**Contract# MA-060-14011934 For
Service, Preventative Maintenance and Consumables for Liquid Chromotograph Mass Spectrometers**

This agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between, Waters Technologies Corporation, with a place of business at 34 Maple St., Milford, MA 01757; hereinafter referred to as "Contractor," and the County of Orange, a political subdivision of the State of California, through its Sheriff-Coroner Department with a place of business at 320 N. Flower Street, 2nd Floor, Santa Ana, CA 92703, hereinafter referred to as "County," which may be referred individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, County's Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for Service, Preventative Maintenance and Consumables for Liquid Chromotograph Mass Spectrometers.

NOW, THEREFORE, the Parties mutually agree as follows:

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. **Entire Contract:** This Contract, including Attachments A, B, C, and Exhibit 1 (Blank Child Support Enforcement Certification Requirements Form), which have been incorporated, when accepted by the Contractor in writing contains the entire contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes, amendments or revisions are valid or binding on County unless authorized by both parties in writing. Electronic acceptance of any additional terms, conditions or supplemental contracts by either party's employee or agent, including but not limited to installers of equipment, shall not be valid or binding on either party unless accepted in writing by both parties.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to Contractor's applicable specifications, drawings, description, or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Contractor will use reasonable best efforts to provide prompt service, but will not be liable for any damage resulting from (i) delays in rendering service; (ii) delays in performing repairs; or (iii) delays in delivery or shipment of the Equipment.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until the goods/services have actually been received, inspected, and tested to the satisfaction of County. Testing and inspection shall be in accordance with the Contractor's written specifications and shall not delay payments), and 2) payment shall be made in arrears after satisfactory acceptance by the County and in accordance to Attachment C, Compensation and Pricing. Net thirty (30) days

from date of invoice. Delay in making payment by the County will not operate to extend the term specified in the Plans. Contractor may, at its option, suspend service during any period in which the County has failed to make payments in a timely manner. Such suspension of service shall not limit any other legal remedies to which Contractor may be entitled.

- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are free of liens or encumbrances . Contractor warrants that the service performed and the products and parts supplied to repair or replace the Equipment conform to industry standards of workmanship and materials. Contractor' obligations for software consulting, training and documentation services shall be limited to providing the selected services on a best efforts basis. CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The sole obligation of Contractor shall be to repair or replace any Contractor non-conforming product or part during the term specified in the Plans. This warranty shall not be deemed to have failed of its essential purpose as long as Contractor is willing and able to repair or replace any Contractor non-conforming product or part covered by the plan selected by County . In the event that an instrument covered by a service plan cannot be repaired, Contractor reserves the right to provide to County : (a) Prorated refund or credit of the purchase price, or (b) Prorated credit towards the purchase of a replacement instrument.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor shall indemnify and hold County harmless from and against any claims brought by third parties to the extent caused by infringement of any U.S. patent, copyright, trade secret, trademark or other proprietary right in connection with the products and/or services furnished under this Agreement. Contractor shall have the right to assume the defense of any such claim or action (subject to County's right to approve defense counsel, such approval shall not be unreasonably withheld) and all negotiations for its settlement or compromise; provided, however, that; Contractor shall not, without County's consent (which shall not be unreasonably withheld or delayed), agree to any settlement which makes any admission on behalf of County or consent to an injunction against County, except to the extent any such injunction relates solely to County's use of the services. County shall provide reasonable cooperation to Contractor in the defense, settlement or compromise of such claim. The foregoing Section H notwithstanding, Contractor shall not have any liability to County under this Section H to the extent that any third party infringement claim is based upon: (i) County's use of the product in combination with equipment or software not supplied hereunder where the alleged infringement would not exist but for such combination; or (ii) County's use of the product and/or service in an application or environment for which it was not designed or not contemplated in its product literature; (iii) County's use of other than a current non-infringing release of the product and/or service provided to County by Contractor; (iv) unauthorized modifications of the product and/or service by anyone other than Contractor.
- I. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by either party without the express written consent of the other party.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the

Contract shall relieve County of all further obligation.

- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- P. **INSURANCE PROVISIONS**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and

coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this Contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Intentionally Deleted
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall have no liability for failure to perform, or delay in performance, in the delivery of any and all equipment manufactured or sold by Contractor including instruments, supplies, components, systems, chemistry, accessories, replacement spare parts, or any and all services provided by Contractor, caused by circumstances beyond its reasonable control including, but not limited to, acts of God, acts of nature, floods, fire, explosions, war or military mobilization, United States governmental action or inaction, request of governmental authority, delays of any kind in transportation or inability to obtain material or equipment, acts of other governments, strikes, or labor disturbances, provided that Contractor gives written notice of the cause of the delay to the County and Contractor avails itself of any available remedies to mitigate the delay.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees. No obligation shall be imposed on Contractor with respect to any information which: (a) at or before the time of disclosure is, or becomes through no act or omission of Contractor, part of the public domain; (b) was known to Contractor from an independent (non-County) source, as shown by independently verifiable written records, to Contractor at or prior to disclosure to Contractor, provided that such knowledge was not gained from third parties through breach of secrecy obligations; (c) is subsequently disclosed to Contractor by a third party having no obligation of confidentiality with respect to the information; or (d) is required to be disclosed pursuant to any governmental, judicial or administrative proceeding, provided that Contractor will take reasonable precautions to notify County of such disclosure prior to the event.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall comply, at Contractor's expense, with all applicable standards, laws, statutes, ordinances, and

regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above, Contractor agrees that it shall defend, indemnify and hold County and CountyIndemnitees harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.

- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract. Contractor will also pay shipping charges for the return of Equipment to Contractor, provided the County has complied with the provisions of Paragraph X below ("Return of Equipment").
- X. Return of Equipment Contractor will accept the return of Equipment(or component parts of such Equipment) only when accompanied by a Return Authorization Number ("RAI#") issued by a Contractor Service representative prior to shipment of the Equipment by the County.
- X. **Pricing:** The Contract price shall include full compensation for providing all required goods in accordance with Contractor's service plan specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Both parties acknowledges that they have read and agree to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- FF. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable

in accordance with its terms.

- GG. **Employee Eligibility Verification:** Contractor warrants that it complies with all applicable Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. **Contractor shall** indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- HH. **Indemnification:** Contractor shall indemnify and hold County harmless from and against any claims brought by third parties to the extent caused by the negligence or willful misconduct of Contractor, its agents, employees, subcontractors and consultants in the performance of its obligations hereunder. Contractor shall have the right to assume the defense of any such claim or action (subject to County's right to approve defense counsel, such approval shall not be unreasonably withheld) and all negotiations for its settlement or compromise; provided, however, that; Contractor shall not, without County's consent (which shall not be unreasonably withheld or delayed), agree to any settlement which makes any admission on behalf of County or consent to an injunction against County, except to the extent any such injunction relates solely to County's use of the services. County shall provide reasonable cooperation to Contractor in the defense, settlement or compromise of such claim.
- II. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours, with thirty (30) day written notice, to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of contractor for the purpose of auditing or inspecting any aspect of performance under this contract. The inspection and/or audit will be confined to those matters connected with the performance of the contract including, but no limited to, the costs of administering the contract. The County will provide reasonable notice of such an audit or inspection. All information provided to County pursuant to this provision is confidential to Contractor and County shall only disclose the information to its employees who need to know in order to carry out the purpose of this section.

The County reserves the right to audit and verify the contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this contract or by law.

foregoing

Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which County will procure and receive goods/services from Contractor as set forth in the Scope of Work, which is attached hereto as Attachment A and incorporated by this reference.
2. **Term of Contract:** ~~This Contract shall commence upon execution of all necessary signatures, and shall be effective for one (1) year from that date, unless otherwise terminated by County. Contract may be renewed for up to four (4) additional one-year consecutive terms, upon mutual agreement of both Parties. Each renewal of this Contract may require approval by the County Board of Supervisors. The County does not have to give reason if it elects not to renew.~~

The period of 7/14/15 through and including 7/13/16 shall be known as Contract number MA-060-14011934. The period of 7/14/16 through and including 7/13/17 shall be known as Contract number MA-060-16011886. This Contract may be renewed for three (3) separate additional one-year terms by mutual written agreement of both Parties. The County is not under any obligation to provide Contractor with a reason should it elect not to renew this Contract

3. **Precedence:** The Contract documents will consist of this Contract including its Attachments, and Exhibits. In the event of a conflict between the Contract documents, the order of precedence shall be this Contract, then the Attachments and Exhibits.
4. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being made by the County's Board of Supervisors for each year during the term of this Contract. If such appropriations are not forthcoming, the Contract will be terminated without penalty. Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
5. **Conflict of Interest (Contractor):** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that result in a conflict with the best interest of County. This obligation shall apply to Contractor, Contractor's employees, agents, relatives, sub tier contractors and third parties associated with accomplishing the work hereunder.

Contractor's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interest of County.

6. **Contractor Work Hours and Safety Standards:** Contractor shall ensure compliance with all safety and hourly requirements for employees, in accordance with all applicable federal, state, and County safety and health regulations and laws.
7. **County and Contractor Project Manager:** County shall appoint a project manager to act as liaison between County and Contractor during the term of this Contract. County's project manager shall coordinate the activities of County staff assigned to work with Contractor.

Contractor shall appoint a project manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. County's project manager shall have the right to require the removal and replacement of Contractor's project manager from providing services to County under this Contract. County's project manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by County's project manager. County is not required to provide any reason, rationale or factual information in the event it elects to request the removal of Contractor's project manager from providing services to County under this Contract.

8. **Contractor Personnel:** In addition to the rights set forth in paragraph 7, County's project manager shall have the right to require the removal and replacement of any of Contractor's personnel from providing services to County under this Contract. County's project manager shall notify Contractor's project manager in writing of such action. Contractor shall accomplish the removal of the specified personnel within one (1) calendar day after written notice by County's project manager. County is not required to provide any reason, rationale or factual information in the event it elects to request the removal of any of Contractor's personnel from providing services to County under this Contract.
9. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
10. **Reprocurement Costs:** In the case of default by Contractor, County may procure the service from other sources. This is in addition to any other remedies available under law.
11. **County of Orange Child Support Enforcement(Exhibit 1 – Blank County of Orange Child Support Enforcement Certification Requirements Form):** In order to comply with the child support enforcement requirements of County, upon request of notification of selection of award of Contract but prior to official

award of Contract, the selected Contractor agrees to furnish the required Contractor data and certifications to the agency/department deputy purchasing agent.

Failure of Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from County shall constitute grounds for termination of the Contract.

12. **Authorization Warranty:** Contractor represents and warrants that the person executing this Contract on behalf of and for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition, and obligation of this Contract and that all requirements of Contractor have been fulfilled to provide such actual authority.
13. **Notices:** Any and all notices permitted or required to be given hereunder shall be deemed duly given (1) upon actual delivery, if delivery is by hand; or (2) upon delivery by the United States mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time.

For Contractor:

Waters Technologies Corporation
34 Maple St.
Milford, MA 01757
Attn: Legal
Ph: 800-252-4752

For County:

County of Orange
Sheriff-Coroner Department/Purchasing Services Unit
320 N. Flower Street, 2nd Floor
Santa Ana, CA92703
Attn: Lorena Quirarte, Buyer
Ph: 714-834-4690
Fx: 714-834-6411

County of Orange
Sheriff-Coroner Department/Crime Lab Division
320 N. Flower Street
Santa Ana, CA92703
Attn: Jan Jones
Ph: 714-834-4690

14. **Data – Title to:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County upon request. .
15. **Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored with Contractor for a period of three (3) years after final payment is received from County. .
16. **Disputes-Contract:** A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not

disposed of in a reasonable period of time by Contractor's project manager and County's project manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:

- a. Contractor shall submit to the agency/department Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
- b. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that that demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
- c. If the parties are not able to come to resolution, either party may pursue all available legal remedies.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If County fails to render a decision within ninety (90) days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. County's final decision shall be conclusive and binding regarding the dispute unless Contractor commences action in a court of competent jurisdiction.

17. **Substitutions:** Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.
18. **Price :** No price increases will be permitted during the first period of the agreement. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the contract. Adjustments increasing the Contractor's profit will not be allowed. Written quotations are valid for thirty (30) calendar days from the date issued unless an extended period for acceptance is specifically set forth in the quotation. Prices for renewal quotations are valid up to the previous contract's expiration date. Contractor's Quotations are subject to termination by written notice from Contractor to the County within the validity period.
19. **Inspection and Certification:** Prior to accepting Equipment for coverage under the Plans, Contractor may, at its option, inspect and certify that the Equipment is functioning properly. Equipment and software must meet current performance standards and must be operated in an environment and system configuration acceptable to Contractor. Service including parts, labor or travel required to bring the Equipment to performance standards acceptable to Contractor is not covered by the Plans. This service must be authorized by the County, completed and paid for prior to initiating Plan coverage. The cost for such service provided to the County will be invoiced at the rates in effect at the time the service is provided. Equipment covered by the product warranty issued at the time of purchase by the County may be converted to Plan coverage without a pre-plan inspection by Contractor.
20. **Service and Repair:** Service and repair of the Equipment will be provided by an authorized Contractor Service Representative. Contractor may use one or more of the following service options to replace or repair Equipment:
 - (a) dispatch a Contractor service representative to County's facility; or
 - (b) provide for repair or replacement of the Equipment at a Contractor repair facility; or

(c) provide delivery of replacement components to County, with instructions for installation of the components by County.

In providing service under the Plans, Contractor may, at its option, use components that are "reconditioned," i.e., assemblies and parts which have been re-manufactured by Contractor to meet current hardware and firmware revisions as well as the product quality and performance testing requirements for new products. Contractor may, while performing service on the Equipment, replace outdated hardware, firmware and software with current revisions. Contractor cannot guarantee the continued availability of outdated assemblies.

21. Exclusions: The service plans cover Equipment repairs and maintenance which results from normal use and operation of the Equipment. Contractor will not be obligated to perform service on Equipment which, in its sole reasonable judgment:

(a) has been improperly installed, altered or damaged;

(b) has been repaired by other than an authorized Contractor Service Representative;

(c) has been altered or damaged as a result of additions or changes made to the Equipment by County or others;

(d) has been damaged due to decomposition resulting from chemical action, environmental or operating conditions as identified in the Contractor's site prep documentation;

(e) has been damaged due to operator failure to perform standard operating procedures and routine maintenance, including the replacement of common replacement parts (using Contractor-approved parts and supplies), as set forth in Contractor published literature and manuals;

(f) has been damaged due to transfer of the Equipment by County from the location specified in the Plans without supervision by Contractor;

(g) has been damaged due to the use of operating supplies and maintenance parts which do not conform to Contractor's specifications.

Repair of damage(s) caused by the use of such supplies or parts is not covered under the terms of the Plan. Service (parts, labor and travel) required to repair such damage(s) will be invoiced at the rates in effect at the time the service is rendered.

22. Additional Equipment: County may, subject to acceptance by Contractor, request an addendum to the selected Plan to add Equipment. Prices in effect at the time of any addition shall apply to the Equipment being added, and the term of such addendum shall be coterminous with that of the original Plan.

23. Relocation of Products.

(a) County shall give Contractor thirty (30) days written notice prior to any relocation of products covered by on-site support services being provided under this Contract.

(b) Products moved to a location within the contiguous United States shall continue to be serviced under this Contract. The response time and charges will be adjusted to reflect the new location.

(c) Products moved outside the contiguous United States may continue to be serviced under this Contract, at the option of Contractor. The services to be provided and charges for such services shall be subject to mutual agreement.

(d) For installed products which will continue to be serviced, Contractor, at its option, may supervise the dismantling and packing of the products and may inspect and reinstall products at the new location. These services, if provided, shall be at additional charge based on Contractor standard service rates in effect at the time. County shall furnish full labor and materials for the dismantling, packing and placement of the products in the new location.

(e) County shall be responsible for any loss or damage to the products during relocation.

24. Agents, etc.: No agent, employee or other representative has the right to modify or expand Contractor's standard warranty applicable to the Plans or to make any representations other than those set forth in Contractor's literature and any such affirmation, representation or warranty, if made, should not be relied upon by County and shall not form a part of this Contract.

25. Additional Terms and Conditions: The service plan(s) is also subject to the applicable Contractor Service

Plan Statement of Coverage.

26. **Limitation of Liability:** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS INFORMATION OR PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS AND/OR SERVICES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTORS' TOTAL LIABILITY IN ANY EVENT SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS AND/OR SERVICES TO WHICH THE DAMAGES RELATE AND, THE PARTIES AGREE THAT SUCH LIMITED LIABILITY IS A REASONABLE ALLOCATION OF THE RISKS INVOLVING THE PRODUCTS AND/OR SERVICES. ~~EXCEPT THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY IF THE LIABILITY RESULTS FROM CONTRACTOR'S, ITS EMPLOYEES', OR AGENTS' NEGLIGENCE OR WILLFUL MISCONDUCT, IN WHICH CASE PARAGRAPH III, ABOVE, CONTROLS. SIMILARLY, THIS LIMITATION OF LIABILITY SHALL NOT APPLY WHERE CONTRACTOR'S LIABILITY RESULTS FROM AN ALLEGED INFRINGEMENT OF COPYRIGHT, TRADEMARK, ETC., IN WHICH CASE THE PROVISIONS OF PARAGRAPH H, ABOVE, CONTROLS.~~ THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SHALL NOT BE APPLIED TO LIMIT CONTRACTOR'S INDEMNIFICATION OBLIGATIONS WITH RESPECT TO DAMAGES AWARDED TO A THIRD PARTY UNDER SECTION H OF THIS AGREEMENT

-Signature Page to Follow-

Signature Page

The Parties hereto have executed this Contract# MA-060-14011934 Service, Preventative Maintenance and Consumables for Liquid Chromotograph Mass Spectrometers for on the dates shown opposite their respective signatures below

Contractor*: Waters Technologies Corporation

By: _____ Title: _____

Print Name: _____ Date: _____

Contractor*: Waters Technologies Corporation

By: _____ Title: _____

Print Name: _____ Date: _____

*If a corporation, the document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurers. **In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

County Of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____ Title: _____

Date: _____

Approved by the Board of Supervisors: _____

Approved as to Form
Office of the County Counsel
Orange County, California

by _____
Deputy

