



**CONTRACT NO. MA-042-21011594**

**FOR**

**MISEQ MAINTENANCE AND SUPPORT  
SERVICES**

**BETWEEN**

**THE COUNTY OF ORANGE  
HEALTH CARE AGENCY**

**AND**

**ILLUMINA, INC.**

**AMENDMENT NO. 4 TO**  
**CONTRACT NO. MA-042-21011594**  
**FOR**  
**MISEQ MAINTENANCE AND SUPPORT SERVICES**  
**WITH**  
**ILLUMINA, INC.**

This Amendment No. 4 to Contract Number MA-042-21011594 ("Contract"), is made and entered into on 1<sup>st</sup> day of November, 2023 ~~this \_\_\_\_\_ day of \_\_\_\_\_, 2021~~ ("Effective Date") between Illumina, Inc. ("Contractor"), and with a place of business at 5200 Illumina Way, San Diego, CA92122-4616, and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency with a place of business at 400 W. Civic Center Dr., Floor 3, Santa Ana, CA 92701. ~~200 W. Santa Ana Blvd., Suite 650, Santa Ana, CA 92701-7506.~~ Contractor and County may sometimes be referred to hereinafter individually as "Party" or collectively as "Parties."

**ATTACHMENTS**

This Contract is comprised of this documents and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work/Pricing  
Attachment B – Compensation and Invoicing  
Attachment C – Contractors Services Contract Terms and Limitations

**RECITALS**

WHEREAS, the Parties executed Contract No. MA-042-21011594 for Miseq Maintenance and Support Services, effective November 1, 2021 through October 31, 2023, in an amount not to exceed \$26,733 ("Contract"); and

WHEREAS, the Parties executed Amendment No. 1 to increase the Contract Amount by \$2,021, for a new total amount no to exceed \$28,754; and

WHEREAS, the Parties executed Amendment No. 2 to increase the Contract Amount by \$21,486.99, for a new total amount not to exceed \$50,241; and

WHEREAS, the Parties executed Amendment No. 3 to increase the Contract Amount by \$5,000, for a new total amount not to exceed \$55,241;

WHEREAS, the Parties now desire to enter into this Amendment No. 4 to the Contract to increase the amount not to exceed by \$80,000 to cover additional services and to update Attachment B-3, Compensation and Invoicing.

NOW THEREFORE, Contractor and County agree to amend the Contract as follows:

**DEFINITIONS**

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

## ARTICLES

### 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 adjudication to another county.
- B. **Entire Contract:** This Contract 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 or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- 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:** Time of delivery services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the goods not conforming to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received or, inspected to the satisfaction of County, and 2) payment shall be made in advance.
- G. **Warranty:** Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Y" below, and as more fully described in paragraph "Y," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or

federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- 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 warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Y" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such direct claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such direct claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** 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 Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- 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 penalties pursuant to Section 1741 of the California Labor Code.
- K. **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.
- L. **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.
- M. **Performance Warranty:** Contractor shall warrant 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 the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

**N. Insurance Requirements:**

Contractor will need to comply with the following insurance requirements if making the deliveries to the County of Orange. No insurance is required if a common carrier makes deliveries to the County of Orange.

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements 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.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the

most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
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 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 20 26 04 13 or a form at least as broad naming the **County of Orange its elected and appointed officials, officers, agents and employees** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad 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.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this 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 and endorsements within seven (7) 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, which shall be mutually agreed upon. 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 (30) 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.

- O. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- P. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may

reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- Q. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- R. **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.
- S. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, 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 "Y" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- T. **Freight:** Intentionally Deleted
- U. **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.
- V. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- W. **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 had 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 effect the purpose of the parties and this Contract.

- X. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all 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. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the 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.
- Y. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any direct claims, demands or liability, including but not limited to personal injury or property damage, arising from Contractor's negligent acts or willful omissions in its performance pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- Z. **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 and upon advance written notice to all documents directly relating to this Agreement 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 not limited to, the costs of administering the Contract.
- 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.
- Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.
- AA. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for

each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty. Notwithstanding the above, County shall pay for all services delivered under this Contract.

**BB. Expenditure Limit:** Intentionally Deleted

**Additional Terms and Conditions:**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County shall procure Miseq Maintenance and Support Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on November 1, 2023<sup>4</sup> through and including October 31, 2026<sup>3</sup>. Contract shall be in effect for the time periods specified, unless this Contract is earlier terminated by the Parties. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
3. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - a) Terminate the Contract immediately, pursuant to Paragraph 22 herein;
  - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
  - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
4. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
5. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

6. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
7. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to request the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall review the removal request within five (5) business days after written notice by the County’s Project Manager.

8. **Contractor’s Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles.
9. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
10. **Cooperative Contract:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.  
The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County’s request.
11. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All

materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

12. **Default – Reprocurement Costs:** Intentionally Deleted

13. **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 the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

1. The Contractor shall submit to the agency/department assigned 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 the County, on its own initiative, has already rendered such a final decision.
2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the 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 the Contractor believes the County is liable.

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

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in Paragraph 22 herein.

14. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. The organization's policy of maintaining a drug-free workplace;

- c. Any available counseling, rehabilitation and employee assistance programs; and
  - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
- a. Will receive a copy of the company's drug-free policy statement; and
  - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

- 1. The Contractor has made false certification, or
  - 2. The Contractor violates the certification by failing to carry out the requirements as noted above.
15. **EDD Independent Contractor Reporting Requirements** Intentionally Deleted
16. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
17. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
18. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California regulations as may now exist or be amended in the future.

The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
20. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor:      Name:            Illumina, Inc.  
                                  Attention:       Michele Langner  
                                  Address:        5200 Illumina Way  
                                                     San Deigo CA 92122-4616  
                                  Telephone:     858-295-9544  
                                  E-mail:        [mlanger@illumina.com](mailto:mlanger@illumina.com)

For County:            Name:            County of Orange HCA/Purchasing  
                                  Attention:       Roland Tabangin  
                                  Address:        200 W. Santa Ana Blvd Suite 650  
                                                     Santa Ana, CA 92701

Telephone: (714) 834-3151  
 E-mail: [rtabangin@ochca.com](mailto:rtabangin@ochca.com)

Program: Name: County of Orange HCA/Public Health Laboratory  
 Attention: Lydia Mikhail  
 Address: 1729 W. 17<sup>th</sup> St.  
 Santa Ana, CA 92706-2344  
 Telephone: 714-834-8378  
 E-mail: [lmikhail@ochca.com](mailto:lmikhail@ochca.com)

21. **Precedence:** The Contract documents consist of this Contract and its Attachment and Exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, the Attachments, and then the Exhibits.
22. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract or 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.
- After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination and submission of a termination claim, County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract and subject to Paragraph 3 and 13, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. 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 performance of the Contract.
23. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
24. **Usage Reports:** Intentionally Deleted
25. **Contractor Screening:** Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.

- a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).
  - b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).
  - c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database).
26. **Debarment:** To the extent applicable, Contractor shall certify in writing that neither Contractor nor its employee(s) are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in a contractual transaction by any state or federal department or agency. Where Contractor is unable to certify to any of the statements in the written certification, Contractor must include a written explanation thereon for the County to consider. County shall have the right to refuse to enter into this Contract with the Contractor, or terminate this Contract if already entered into, if Contractor either fails to certify or certifies that it is subject of any debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any state or federal department or agency.
27. **Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.
28. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.
29. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
30. **Parking for Delivery Services:** County shall not provide free parking for delivery services.

(SIGNATURE PAGE FOLLOWS)



**CONTRACT SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract No. MA-042-21011594 the date set forth opposite their signatures. If the company is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

**Contractor: Illumina, Inc.**

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

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County of Orange, a political subdivision of the State of California

Purchasing Agent/Designee Authorized Signature:

\_\_\_\_\_  
Print Name Deputy Purchasing Agent  
Title

\_\_\_\_\_  
Signature Date

**ATTACHMENT A****SCOPE OF WORK****~~CONTRACTOR RESPONSIBILITIES FOR SERVICE AGREEMENT:~~**

- ~~1. Comprehensive coverage to provide full-service support for MiSeq instrument, including preventative maintenance.~~
- ~~2. Require one (1) preventative maintenance visit per year.~~
- ~~3. Scheduled preventative maintenance shall include cleaning, inspecting adjustment, and calibration to published factory specifications. Minor problems shall be corrected to prevent catastrophic failures that jeopardize valuable samples and lab productivity.~~
- ~~4. Remote monitoring shall be provided by Vendor at no additional charge.~~
- ~~5. Replacement parts shall be provided by the Vendor at no additional charge; any additional charges shall be preauthorized before being replaced.~~
- ~~6. Replacement of reagents shall be provided at no charge upon instrument hardware failure.~~
- ~~7. Labor, travel, travel time, mileage, equipment, testing equipment, and tools shall be included.~~
- ~~8. Emergency calls require remote technical support within 24 hours and 2 business day on-site response.~~
- ~~9. Warranty shall include all parts and materials used for service/repair.~~
- ~~10. Service required Monday through Friday between normal business hours of 8 a.m. to 5 p.m.~~
- ~~11. Services required on Service Contract are as follows but not limited to basic service, repair, preventative maintenance, testing, and software and hardware updates.~~
- ~~12. Telephone technical support required Monday through Friday between normal business hours of 8 a.m. to 5 p.m.~~
- ~~13. Equipment to be serviced under agreement:~~

<del>Equipment</del>	<del>Serial Number</del>
<del>Illumina MiSeq</del>	<del>M04005</del>
<del><b>MiSeq Silver Support Plan</b> Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day onsite response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular fullservice plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies. <b>Asset Number:</b> M04005 <b>Contract Term:</b> 24.00 months <b>Billing Frequency:</b> In-Full Advance Invoicing <b>Contract Start Date:</b> November 1, 2021 <b>Contract End Date:</b> October 31, 2023</del>	

**CONTRACTOR RESPONSIBILITIES FOR BASESPACE:**

1. ~~Provide BaseSpace Sequence Hub for monitoring tests, storing data, analyzing data and sharing results securely with the Centers for Disease Control.~~

~~Note: County reserves right to reduce quantity or cancel order for items not already in transit.~~

~~No material adjustments made to the Scope of Work will be authorized without prior written approval of the County. Non-material adjustments may be made with the written approval of the County assigned Deputy Purchasing Agent.~~

**ATTACHMENT A-1**  
**REVISED SCOPE OF WORK**

**I. CONTRACTOR RESPONSIBILITIES FOR CONTRACT****A. Contractor shall:**

1. Provide comprehensive coverage that provides full service support, including preventative maintenance, for the MiSeq Instruments, Serial Numbers M04005 & M05870, purchased under this Contract and, effective November 1, 2023, the MiniSeq Instrument, Serial Number MN01429, purchased under Contract No. MA- 042-21010322. Contract No. MA-042-21010322 is expiring and the comprehensive service coverage for the MiniSeq Instrument, Serial Number MN01429, will be continued under this Contract.
2. Perform one (1) preventative maintenance visit per year on each instrument identified in A.1. above at no additional charge. This scheduled preventative maintenance shall include cleaning, inspecting adjustment, and calibration to published factory specifications. Contractor shall correct minor problems as part of the preventative maintenance visit to prevent catastrophic failures that jeopardize valuable samples and lab productivity.
3. Provide remote monitoring of each instrument identified in A.1. above at no additional charge.
4. Provide replacement parts for each instrument identified in A.1. above at no additional charge; any additional charges shall be preauthorized before a part is replaced.
5. Provide replacement of reagents at no charge upon instrument hardware failure.
6. Not charge for labor, travel, travel time, mileage, equipment, testing equipment, and tools; all such expenses shall be included.
7. Provide remote technical support for County's emergency calls within 24 hours of call and provide on-site technical support for County's emergency calls within 2 business days of call.
8. Warranty shall include all parts and materials used for service/repair.
9. Provide remote and on-site service Monday through Friday between normal business hours (8 a.m. to 5 p.m.)
10. Provide services including, but not limited to, basic service, repair, preventative maintenance, testing, and software and hardware updates.

11. Provide telephone technical support Monday through Friday between normal business hours (8 a.m. to 5 p.m.)

12. Provide service for the following equipment:

<u>Equipment</u>	<u>Serial Number</u>
<b>Illumina MiSeq</b>	<b>M04005</b>

**MiSeq Silver Support Plan** Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day onsite response target\*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. \*select geographies. **Asset Number:** M04005 **Term:** 36.00 months **Billing Frequency:** In-Full Advance Invoicing **Start Date:** November 1, 2023 **End Date:** October 31, 2026

<u>Illumina MiSeq</u>	<u>M05870</u>
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**MiSeq Silver Support Plan** Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day onsite response target\*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. \*select geographies. **Asset Number:** M05870 **Term:** 36.00 months **Billing Frequency:** In-Full Advance Invoicing **Start Date:** November 1, 2023 **End Date:** October 31, 2026

<u>Illumina MiniSeq</u>	<u>MN01429</u>
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**MiniSeq Silver Support Plan** Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day onsite response target\*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. \*select geographies. **Asset Number:** M04005 **Term:** 36.00 months **Billing Frequency:** In-Full Advance Invoicing **Start Date:** November 1, 2023 **End Date:** October 31, 2026

**BaseSpace Sequence Hub**

**BaseSpace Sequence Hub Professional Annual Subscription** The Professional tier includes 500 iCredits to get started quickly with BaseSpace apps and data storage, 1 workgroup to enhance collaboration, and access to powerful APIs. **Term:** 36.00 months **Billing Frequency:** In-Full Advance Invoicing **Start Date:** November 1, 2023 **End Date:** October 31, 2026

Note: County reserves right to reduce quantity or cancel order for items not already in transit.

No material adjustments made to the Scope of Work will be authorized without prior written approval of the County. Non-material adjustments may be made with the written approval of the County assigned Deputy Purchasing Agent.

**ATTACHMENT B-3**  
**COMPENSATION AND INVOICING**

~~1. **Compensation:** This is a fixed price Contract not to exceed the amount of \$55,241 for the Term of Contract. The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work.~~

~~2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract.~~

Catalog Number	Item Description	List Price (USD)	Units	Subtotal (USD)
20042038	Illumina Analytics - 1 iCredit iCredits are used for data storage and analysis on either BaseSpace Sequence Hub or Illumina Connected Analytics.	\$1.00	5000	\$5,000.00
Subtotal				\$5,000.00
Final Investment (USD)				5,000.00

~~3. **Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County may enforce, 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.~~

~~4. **Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.~~

~~5. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.~~

~~6. **Payment Terms:** Invoices are to be submitted to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be in advance after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.~~

~~Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.~~

~~Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.~~

~~7. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.~~

~~8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:~~

- ~~a. Contractor's name and address~~
- ~~b. Contractor's remittance address~~
- ~~c. Contractor's Taxpayer ID Number~~
- ~~d. Name of County Agency/Department~~
- ~~e. Delivery/service address~~
- ~~f. Master Agreement (MA) **MA-042-21011594**~~
- ~~g. Agency/Department's Account Number, if applicable~~
- ~~h. Date of invoice~~
- ~~i. Product/service description, quantity, and prices~~
- ~~j. Sales tax, if applicable~~
- ~~k. Freight/delivery charges, if applicable~~
- ~~l. Total~~

~~The responsibility for providing acceptable invoices to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor.~~

~~Invoice and support documentation are to be emailed to [hcaap@ochca.com](mailto:hcaap@ochca.com) OR forwarded to:~~

~~Orange County Health Care Agency  
Accounts Payable  
PO Box 689  
Santa Ana, CA 92702~~

### ~~9. **Payment (Electronic Funds Transfer)**~~

~~County offers Contractor the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT shall also receive an Electronic Remittance Advice with the payment details via email. An e-mail address shall need to be provided to County via an EFT Authorization Form. Contractor may request a form from the agency/department representative listed in the Contract.~~

## **ATTACHMENT B-4** **REVISED COMPENSATION AND INVOICING**

**1. Compensation:** This is a fixed price Contract not to exceed the amount of \$400,240.99 for the term of the Contract.

Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work.

**2. Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. The table below sets forth the fees for the term under this Contract for the period of November 1, 2023 through October 31, 2026. The fees under this Contract for the period November 1, 2021 through October 31, 2023 have been paid by County.



## PRODUCT AND PRICING

Catalog Number	Item Description	List Price (USD)	Discount	Discounted Price (USD)	Units	Term (Years)	Subtotal (USD)
20019983	<p><b>MiSeq Silver Support Plan</b> Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day on-site response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies.</p> <p><b>Asset Number:</b> M04005 <b>Contract Term:</b> 36.00 months <b>Billing Frequency:</b> In-Full Advance Invoicing <b>Contract Start Date:</b> November 1, 2023 <b>Contract End Date:</b> October 31, 2026</p>	15,575.00	778.75 (5.00%)	14,796.25	1	3.00	44,388.75
20019983	<p><b>MiSeq Silver Support Plan</b> Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day on-site response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies.</p> <p><b>Asset Number:</b> M05870 <b>Contract Term:</b> 36.00 months <b>Billing Frequency:</b> In-Full Advance Invoicing <b>Contract Start Date:</b> November 1, 2023 <b>Contract End Date:</b> October 31, 2026</p>	15,575.00	778.75 (5.00%)	14,796.25	1	3.00	44,388.75

20019982	<p><b>MiniSeq Silver Support Plan</b> Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day on-site response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies. Asset Number: MN01429 Contract Term: 36.10 months Billing Frequency: In-Full Advance Invoicing Contract Start Date: October 29, 2023 Contract End Date: October 31, 2026</p>	7,671.00	383.55 (5.00%)	7,287.45	1	3.01	21,921.12
20042109	<p><b>BaseSpace Sequence Hub Professional Annual Subscription</b> Annual subscription for BaseSpace Sequence Hub Professional. The Professional tier Includes 500 iCredits to get started quickly with BaseSpace apps and data storage, 1 workgroup to enhance collaboration, and access to powerful APIs. Contract Term: 36.00 months Billing Frequency: In-Full Advance Invoicing Contract Start Date: November 1, 2023 Contract End Date: October 31, 2026</p>	500.00	0.00 (0.00%)	500.00	1	3.00	1,500.00
<b>Subtotal</b>							112,198.62
<b>Final Investment (USD)</b>							112,198.62

## ATTACHMENT C

### CONTRACTOR'S SERVICE CONTRACT TERMS AND LIMITATIONS

1. Definitions. "Covered Hardware" means those portions of the Hardware that are covered by a Service Contract purchased by Purchaser hereunder. "Current Specifications" means Seller's written specifications for the Covered Hardware that apply to such Covered Hardware as provided in the Service Contract that is purchased hereunder, but only if the purchased Service Contract provides that the Covered Hardware will conform to current specifications rather than the Original Specifications. "Purchaser" means the person or entity acquiring the Service Contract from Seller. "Documentation" means Seller's user manual, package insert, and similar documentation, for the Covered Hardware in effect on the date that such Covered Hardware shipped from Seller. Documentation may have contained additional terms and conditions that are hereby incorporated herein by reference. Documentation may have been provided (including by reference to a website) with the Covered Hardware at time of shipment or provided electronically from Seller. "EULA" means the end user license agreement for Software. "Facility" means the physical address where Covered Hardware is located. "Hardware" means Seller branded instruments, accessories, or peripherals. "Original Specifications" means Seller's written specifications for the Covered Hardware in effect on the date that such Covered Hardware shipped from Seller. "Original Terms" means the Seller terms and conditions of sale in effect on the date the Covered Hardware was shipped from Seller setting forth the terms and conditions of Purchaser's purchase and use of such Covered Hardware, components thereof, and Software. "Quotation" means a written quotation provided by Seller to Purchaser for the Service Contract. "Seller" means the entity selling the Service Contract hereunder. The Selling entity is identified on the quotation, order acknowledgment or similar communication, or Seller website if the order is being placed electronically at Seller's website. "Specifications" means the Current Specifications or the Original Specifications, as applicable; provided that, Specifications shall in all cases refer to the Original Specifications unless otherwise set forth in the Service Contract. "Site" means the smallest definable room that contains the Covered Hardware. "Software" means Seller branded software provided by Seller with the Covered Hardware. All Software is licensed and not sold and may be subject to additional terms found in the Software's end user license agreement. "Term" means the length of the term of the Service Contract.

2. Term. All Service Contracts are for a period of 12 months, unless otherwise agreed to in writing by Seller or as set forth in the relevant Quotation.

3. Response Time and On-site Support. Seller will use commercially reasonable efforts to respond to Purchaser's requests for service within the time period specified in the Service Contract. All requests for service must be made through Seller's customer support organization ("Purchaser Solutions"). Please refer to Seller's website for Purchaser Solutions contact information. Seller reserves the right to provide service and support by any method in its sole discretion, including but not limited to, remote instruction via telephone, Internet or email, mailing to Purchaser replacement parts or test equipment, exchanging Purchaser's component equipment with loaner equipment while repairs are being made, and deploying service or applications personnel for on-site services. Other than installation and preventative maintenance visits, Seller shall determine in its sole discretion whether and when any personnel or replacement parts or equipment are to be sent to Purchaser's site. Seller shall respond to Purchaser's request for support in accordance with the average response time specified in the Service Contract. Seller will provide a minimum number of on-site support visits as specified in the Service Contract if the Purchaser has identified a specific need that can be fulfilled by the visit and if the Purchaser has made

reasonable accommodation for scheduling the visit. If no need is identified and the timing of any visit cannot be scheduled at a mutually-agreeable date and time, Seller may provide fewer visits than prescribed in the Service Contract.

4. Software Support. During the Term, Seller shall use commercially reasonable efforts to provide all Software updates and qualified Software upgrades in accordance with the terms of the Service Contract as such materials become commercially available for distribution. Purchaser's use of all Software, updates, and upgrades of Software shall be subject to this Agreement, the Original Terms, and the applicable EULA.

5. Hardware Support. During the Term, Seller shall use commercially reasonable efforts to install mandatory Hardware updates in accordance with the terms of the Service Contract as such materials become available for distribution. Whether a Hardware update is mandatory shall be determined by Seller in its sole discretion. Seller shall reschedule Hardware updates to coincide with preventive maintenance visits. If Purchaser requests that such Hardware updates occur at a time or date other than during preventive maintenance visits, Seller may, at its sole discretion, charge Purchaser for any costs and expenses incurred in connection with such Hardware update visit. All updated Hardware and components thereof and Purchaser's use of the same shall be subject to this Agreement and the Original Terms.

6. Hardware Repairs. Seller shall use commercially reasonable efforts to repair Covered Hardware reported by Purchaser and deemed inoperable by Seller's Purchaser Solutions personnel. Seller's sole obligation hereunder is to provide parts and labor according to the terms of the Service Contract and is limited to only repair or replacement of Seller branded parts originally provided by Seller to Purchaser. All repaired or replaced items and Purchaser's use of the Covered Hardware including the repaired or replaced components shall be subject to this Agreement and the Original Terms. For clarity, repaired or replaced items will be warranted to conform to the Specifications for 90 days from the date of installation or repair of such repaired or replaced item.

7. Documentation Updates. Seller shall use commercially reasonable efforts to provide updates to Documentation according to the terms of the Service Contract as they become available for distribution. Whether a Documentation update is mandatory shall be determined by Seller in its sole discretion. All updates to Documentation and Purchaser's use of the Documentation shall be subject to this Agreement and the Original Terms.

8. Replacement Parts. All replacement parts and components provided by Seller will be new or refurbished, in Seller's sole discretion, and shall be furnished on an exchange basis. All Hardware or components thereof or other parts removed for replacement shall become the property of Seller. All replaced parts and components and Purchaser's use of the Covered Hardware including the replaced parts and components shall be subject to this Agreement and the Original Terms. For clarity, repaired or replaced items will be warranted to conform to the Specifications for 90 days from the date of installation or repair of such repaired or replaced item.

9. Loaner Hardware. Seller may choose to provide, in its sole discretion, loaner hardware or components to Purchaser to substitute for the Covered Hardware or a component thereof, while service is being provided. Seller will be responsible for all costs associated with the shipment of such loaner hardware or components to Purchaser's Site, exclusive of any taxes or duties, which are the sole responsibility of Purchaser. Loaner hardware or components shall be certified by Seller's Purchaser Solutions using the same criteria as used for new hardware or components. Loaner hardware or components shall remain the sole property of Seller, and must be returned within 30 days of Seller's request. Purchaser's use of loaner

hardware or components shall be subject to Seller's current terms and conditions of sale that apply to such loaner hardware or component.

10. Preventative Maintenance Visits. Seller will provide a preventative maintenance on-site visit according to the terms of the Service Contract, which may result in two to three days of system down time to Purchaser. Seller shall cooperate with Purchaser to schedule such preventative maintenance visits at a time that is mutually convenient for both parties. All such preventative maintenance services will be provided by Seller designated service personnel. All travel, labor and parts/materials expenses associated with prescribed preventative maintenance visits, visits to service, repair or replace covered items, and applications support visits as provided for in the Service Contract are included in the price set forth for such Service Contract. Preventative maintenance services include testing and adjusting the Covered Hardware to the Specifications. If any preventative maintenance visit within the Term is precluded due to Purchaser's inability to provide a sufficient time period for such services and down time, Seller shall not be obligated to provide a substitute preventative maintenance visit. Seller shall not be liable for any economic, consequential, incidental, special or other damages or losses of any kind resulting from the down time during such preventative maintenance visits.

11. Purchaser Responsibilities.

a. Proper Use: The performance of Covered Hardware when operated in corrosive environments, or in conditions, or in a manner, outside of the Specifications including Seller's site requirements found in the Documentation or not in accordance with its Documentation may have their performance adversely affected, and are therefore not guaranteed hereunder. The Purchaser agrees to use the Covered Hardware in a safe and reasonable manner pursuant to the Documentation and the Original Terms.

b. Access: The Purchaser will provide Seller with access to the Covered Hardware along with adequate working space and facilities within a reasonable distance of the Covered Hardware. Access will also be provided to all information and facilities that are reasonably necessary for Seller to service the Covered Hardware.

c. Data Back-up and Security: The Purchaser is responsible for maintaining a procedure to reconstruct any lost or altered files, data, or programs, as well as for the security of all confidential, proprietary, and classified information.

d. Networking: The Purchaser is responsible for maintaining all computer networking as it relates to the integration of any components of the Covered Hardware outside of such system and within the Purchaser's network.

e. Representative: A representative of Purchaser will be present on-site at all times service is being performed by Seller's designated service personnel.

f. Toxic/BioHazardous Substances: The Purchaser will notify Seller in writing if any Covered Hardware is used for analysis of toxic, hazardous or dangerous substances. Such Covered Hardware must be decontaminated by Purchaser in accordance with Seller's decontamination procedures and Purchaser shall fax a completed and executed Decontamination Certificate to Purchaser Solutions before any service may be performed on the Covered Hardware.

g. Environment: The Purchaser agrees to provide Seller's designated service personnel with a safe environment for their work.

h. Disposal of Waste Products: The Purchaser is responsible for the proper disposal of waste products that result from maintenance and service work on the Covered Hardware.

i. Facilities: The Purchaser is responsible for ensuring that the Site will adhere to Seller's site requirements found in the Documentation or Specifications. Any material deviation from Seller's site requirements affecting the proper functioning of the Covered Hardware shall relieve Seller of its obligations under this Agreement, including without limitation, under the Service Contract.

12. Exclusions and Restrictions. The terms of this Agreement cover maintenance and repair for conditions that result from normal use and operation as described in the Documentation for the Covered Hardware. Seller will not be obligated to perform maintenance or repair on any Covered Hardware which, in its reasonable judgment:

- a. Has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation other than installation performed by Seller authorized personnel, improper storage, improper handling, or use contrary to any instructions issued by Seller or has been used in any manner inconsistent with its Documentation;
- b. Has been repaired, altered, disassembled, reassembled, or damaged as a result of modifications made to the Covered Hardware that were not authorized in writing by Seller;
- c. Has been damaged by environmental conditions at the Site;
- d. Has not been installed, operated, repaired and maintained in accordance with its Documentation or has been damaged due to operators failing to perform standard operating procedures or routine maintenance as prescribed in the applicable Documentation;
- e. Has been moved from the Site by persons not expressly authorized in writing by Seller;
- f. Has been used with any third party software, hardware, or item including, without limitation, reagent which has not been previously approved in writing by Seller;
- g. Has been exposed to Bio-safety Level 3 or 4 agents (as defined by The Occupational Safety and Health Administration);
- h. Has been exposed to radioactivity, and has not been decontaminated to below exempt levels; or
- i. Has been damaged due to an act of Force Majeure as defined herein.

13. Services by Third Parties on Seller' Behalf. Seller reserves the right to retain or contract outside vendors of its choosing to provide service and support hereunder. In any instance where the terms and conditions of such vendor's service, support, and warranty agreement conflicts with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern; provided, however that any exclusions on coverage contained in an OEM vendor's terms and conditions shall remain in full force and effect.

14. Relocation of Hardware. All Service Contracts terminate automatically with immediate effect and without the need for notice to Purchaser if Covered Hardware is moved to a different Facility. Upon such termination, Seller will credit Purchaser's account with Seller an amount equal to the unused portion of the Service Contract; provided that, Purchaser pre-paid for the Service Contract in full. If Seller conducts the move of the Covered Hardware on Purchaser's behalf, then Seller and Purchaser will enter into a new Service Contract for such Covered Hardware at the new Facility.

15. Export of Hardware. Purchaser agrees not to move or relocate Covered Hardware outside of the country to which Seller originally shipped it without the expressly written authorization of an officer of Seller.

16. Recertification Requirement. Hardware not under an existing Service Contract is only eligible for a Service Contract if Seller has inspected the Hardware and its ancillary equipment and provided a written notice to Purchaser that the Hardware is eligible for a Service Contract ("Recertification Requirement"). Purchaser acknowledges that Hardware may have to be repaired, at Purchaser's sole expense, prior to being eligible for a Service Contract. Accordingly, Seller recommends that Purchaser renew its existing Service Contracts prior to their expiration.

17. Renewal of Service Contract. If Purchaser renews the Service Contract on a piece of Covered Hardware prior to the expiration of the Service Contract Seller will waive the Recertification Requirement.

18. Early Termination of Service Contract. Purchaser or Seller may, in their sole discretion, terminate the Service Contract early by providing 30 days prior written notice to the other. Upon such termination, Seller will credit Purchaser's account with Seller an amount equal to the unused portion of the Service Contract; provided that, Purchaser pre-paid for the Service Contract in full; and provided further that, the amount of such credit will be reduced by the amount of any discount Seller provided Purchaser as a result of Seller purchasing a multi-year Service Contract ("Unearned Discount"). In the event Purchaser's Unearned Discount exceeds the amount of credit that Seller would provide under this provision, Seller will invoice Purchaser the difference and such invoice shall be paid within 30 days.

19. Non-Transferable. All Service Contracts are personal to the original Purchaser of the Covered Hardware and may not be transferred or assigned to any third party.

20. Force Majeure. Seller is not responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Seller's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Purchaser's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

21. Unauthorized Activities. Purchaser agrees not to, nor authorize any third party to, engage in any of the following activities: (i) disassemble, reverse-engineer, reverse-compile, or reverse-assemble the Covered Hardware or an items provided hereunder (collectively "Materials"), (ii) separate, extract, or isolate components of the Materials or subject the Materials or components thereof to any analysis not expressly authorized in the Documentation, (iii) gain access to or attempt to determine the methods of operation of the Materials, or (iv) transfer to a third-party, or grant a sublicense to, any Software or any third-party software provided hereunder. Purchaser further agrees that the contents of and methods of operation of the Materials are proprietary to Seller and the Materials contains or embodies trade secrets of Seller.

22. Limited Liability. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER OR ITS SUPPLIERS BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH, WITHOUT LIMITATION, THE SALE OF THE COVERED HARDWARE OR SERVICE CONTRACT, THE USE OF THE COVERED HARDWARE, THE ITEMS AND SERVICES PROVIDED HEREUNDER, SELLER'S PERFORMANCE HEREUNDER OR ANY OF THESE TERMS AND CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). TO THE EXTENT PERMITTED BY LAW, SELLER'S TOTAL AND CUMULATIVE LIABILITY TO PURCHASER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, INCLUDING WITHOUT LIMITATION, THE COVERED HARDWARE OR ITEMS PROVIDED HEREUNDER (INCLUDING USE THEREOF), THE SERVICE CONTRACT, THE SERVICES PROVIDED HEREUNDER, AND SELLER'S PERFORMANCE HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID TO SELLER FOR THE SERVICE CONTRACT AND BILLABLE SERVICES.

23. Limitations on Warranties. TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO THE EXPRESS WARRANTIES MADE IN THESE TERMS AND CONDITIONS SELLER MAKES NO (AND EXPRESSLY DISCLAIMS ALL) WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE COVERED HARDWARE, THE ITEMS PROVIDED HEREUNDER, THE SERVICE CONTRACTS, AND THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.