



**CONTRACT NO. MA-042-22010349**

**FOR**

**REAGENT TEST KITS, EQUIPMENT, &  
MAINTENANCE FOR DETECTION OF  
INFECTIOUS AGENT**

**BETWEEN**

**THE COUNTY OF ORANGE  
HEALTH CARE AGENCY**

**AND**

**GEN-PROBE SALES & SERVICE, INC.  
A SUBSIDIARY OF HOLOGIC, INC.**

**CONTRACT NO. MA-042-22010349****FOR****REAGENT TEST KITS, EQUIPMENT, AND MAINTENANCE FOR DETECTION OF  
INFECTIOUS AGENT**

This Contract Number MA-042-22010349 ("Contract") is made and entered into on the date of full execution by the Parties ("Effective Date") between **Gen-Probe Sales & Service, Inc. ("Contractor")**, a **Subsidiary of Hologic, Inc.**, with a place of business at 10210 Genetic Center Dr., San Diego, CA 92121-4362, and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency with a place of business at 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 document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Compensation and Invoicing

Attachment C – Pricing

**RECITALS**

**WHEREAS**, Contractor and County are entering into this Contract for Reagent Test Kits, Equipment, and Maintenance for Detection of Infectious Agent under a firm fixed fee Contract; and

**WHEREAS**, Contractor agrees to provide Reagent Test Kits, Equipment, and Maintenance for Detection of Infectious Agent to County as further set forth in the Scope of Work, attached hereto as Attachment A; and

**WHEREAS**, County agrees to pay Contractor based on the schedule of fees set forth in Compensation and Invoicing, attached hereto as Attachment B, and Pricing, attached hereto as Attachment C; and

**WHEREAS**, County of Orange Board of Supervisors has authorized the County Procurement Officer or designee to enter into a contract with Contractor for obtaining said services; and

NOW, THEREFORE, the Parties mutually agree 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. 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, the price set forth in Attachment B, Compensation/Invoicing, and Attachment C, Pricing, does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. **Delivery:** County reserves the right to refuse any products or services and to cancel all or any part of the products, which are not conforming to Contractor's published product specifications. Acceptance of any part of the order for products shall not bind County to accept future shipments at Contractor's expense. Over shipments and under shipments of products is only as agreed to in writing by County. Delivery is deemed complete when products and/or services have been received by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall be deemed complete when all the goods/services have been received by County, and 2) payment shall be made in arrears after acceptance.
- G. **Warranty:** Contractor warrants that the Products shall conform to all published specifications for a period ending on the expiration date shown on their respective packages. In the event of any warranty claim, Contractor shall replace any Product in

breach of this warranty with a new Product. Alternatively, Contractor may elect to repay or credit to County an amount equal to the purchase price of the defective Product. Contractor does not and will not manufacture any Equipment provided under this Contract. The Equipment is warranted through manufacturers as described in the manufacturer's applicable Equipment Operator's Manual that Contractor shall provide to County and such warranties extend to Contractor's customers. Contractor warrants that Contractor may, at its option, repair or replace any defective Equipment. The foregoing warranty shall not apply in the event that: (a) County has not used and maintained the Equipment in accordance with the requirements set forth in the manufacturer's applicable Equipment Operator's Manual that Contractor has provided to County upon receipt of the Equipment; (b) if County has used the Equipment with reagents and supplies not expressly authorized by or at the direction of Contractor; (c) if the Equipment is repaired or altered by a party other than Contractor without Contractor's prior written approval, such approval not to be unreasonable withheld, or (d) if the Equipment has been subject to County misuse, negligence, or accident. The foregoing warranties are in lieu of all other warranties, expressed or implied, arising by operation of law or otherwise, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor is solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor must defend, indemnify, and hold harmless County and County Indemnitees from and against any and all losses, liabilities, damages, and all related costs and expenses (including reasonable attorneys' fees) incurred in connection with any third-party claim, action or proceeding threatened or brought against County that Products supplied by Contractor or County's use of Products infringes any United States patent, copyright, trade secret or trademark. However, Contractor will not indemnify County if: (a) Products are not used as expected, intended, approved, directed or authorized by Contractor and have been altered other than by or at the direction or authorization of Contractor or its authorized service personnel; (b) County does not promptly notify Contractor of such claim (though failure to notify Contractor does not relieve Contractor of its indemnification obligations except to the extent Contractor can prove damages attributable to the failure); (c) County does not reasonably cooperate with Contractor, at Contractor's expense, in furnishing aid, information, and assistance reasonably necessary or useful to defend such claim. To the extent permitted by Government Code Section 25203, County may grant Contractor sole control of the defense upon Contractor's request. If a final injunction is obtained against any Product or County's use of any Product, or if in the opinion of County or Contractor the Product is likely to become the subject of a claim of infringement, Contractor must at its option and in its sole discretion and sole expense: (i) procure for County the right to continue using the Product; (ii) replace or modify to County's satisfaction the Product so that it becomes non-infringing while maintaining equivalent function and performance; or (iii) if neither (i) or (ii) are reasonably available to Contractor, accept return of such Products held by County, grant a credit therefor as depreciated on a five (5) year straight-line basis, reimburse County for any losses or costs incurred as a consequence of County ceasing use of the Product and returning the Product, and terminate the portion of the Contract impacted by the infringement.
- I. **Assignment:** The terms, covenants, and conditions contained herein applies to and binds 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; provided, however, that, Contractor may assign the Contract without County's consent to an affiliate of Contractor so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract and Contractor gives County thirty (30) days prior written notice of its intent to assign the Contract to an affiliate of Contractor. County may terminate this Contract immediately without penalty upon any attempt by Contractor to assign this Contract or any portion thereof without County's express prior written consent.

- 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 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 perform all work under this Contract, taking necessary steps and precautions to perform the work to County's reasonable satisfaction. Contractor is responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other products and/or services furnished by 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.
- 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 blanket 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 blanket endorsements on deposit with the County during

the entire term of this Contract. County acknowledges that Contractor has blanket endorsements.

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 including 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) business 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 in Paragraph 17, Notices.

If the Contractor fails to provide the insurance certificates and endorsements within ten (10) business days of notification by CEO/Purchasing or the agency/department purchasing division, the Contract may be terminated immediately without penalty.

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 material 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) business 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 County agrees to Contractor's 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 reasonable satisfaction of County.

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

In addition, Contractor has the duty to notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor is also obligated to notify County in writing if Contractor becomes a party to any litigation that may reasonably affect Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County, that arises prior to or during the period of Contract performance.



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 Contractor, this obligation shall apply to Contractor's employees and agents associated with the provision of products and services provided under this Contract. Contractor's efforts shall include, but not be limited to, establishing rules and procedures preventing its employees and agents 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 to the extent such delay is caused by any act of God, war, civil disorder, pandemics, employment strike or other cause beyond Contractor's reasonable control, provided Contractor gives prompt written notice of the cause of the delay to County from the start of the delay and Contractor avails itself of any available remedies to end the delay and minimize the effects of such delay. County may immediately terminate this Contract without penalty by written notice to Contractor if the delay continues substantially uninterrupted for a period of five (5) business days or more.
- R. **Confidentiality:** Both Parties agree to maintain the confidentiality of all records and information provided to the other in connection with the performance of their respective obligations under this Contract pursuant to all statutory laws, except as set forth in Paragraph 27, California Public Records Act, and to the extent disclosure is required by applicable law.
- S. **Compliance with Laws:** Contractor represents and warrants that Products and 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:** FOB 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.
- 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 has been represented by experienced and knowledgeable independent legal

counsel of its 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 it has 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:** 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. 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 (such approval not be unreasonably withheld), 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.
- Y. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County (such approval not to be unreasonably withheld), and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. Contractor's obligations herein are conditioned on the following: (a) County must provide written notice of any claim, demand, or suit by a third party related to this Contract within thirty (30) days of having knowledge of such claim, demand, or liability; (b) County may not unreasonably withhold its approval that Contractor is allowed to assume full responsibility to investigate, prepare for, and defend with counsel as approved by County in writing (such approval not to be unreasonably withheld) against any such claim, demand, or liability; (c) County must reasonably assist Contractor, at Contractor's reasonable expense, in the investigation and defense of any such claim, demand, or liability. 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, up to once per calendar year, the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County provided that such third party firm is subject to customary and reasonable obligations to maintain the confidentiality of all materials reviewed during such audit or inspection) access during normal working hours 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 directly connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable written notice of such an audit or inspection and such audit or inspection will be conducted during normal business hours and in a manner which is designed not to interfere with the operation of Contractor's business.

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

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law.

- 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
- BB. **Expenditure Limit:** County agrees not to knowingly order any products or services from Contractor for which it does not have funding.

#### **Additional Terms and Conditions:**

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which Contractor shall provide Reagent Test Kits, Equipment, and Maintenance for Detection of Infectious Agent to County as further set forth in the Scope of Work, attached hereto as Attachment A.
2. **Term of Contract:** This Contract shall commence on January 1, 2022 through and including December 31, 2024, unless earlier terminated as permitted under this Contract. The Contract may be renewed for two (2) additional one (1) year periods upon the Parties' mutual agreement. County does not have to give a 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 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, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, do any of the following:
  - a) Terminate the Contract immediately without penalty;

- b) Afford Contractor written notice of the breach and fifteen (15) business days to cure the breach, if the breach is curable;
  - c) Discontinue payment to Contractor for and during the period in which Contractor is in breach; provided, however, that County will pay for all products ordered and shipped that are not in dispute and that are in compliance with this Contract.
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 – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not employ for any purpose, during the period of this Contract, any person Contractor knows or should have known is a County employee.
  6. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. Contractor's Project Manager shall be subject to approval by County and shall not be changed without written notice to the County's Project Manager.  
  
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 require the removal and replacement of the Contractor's Project Manager from providing services to County under this Contract. The County's Project manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within fifteen (15) calendar business days after written notice by the County's Project Manager. County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.
  7. **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 by Contractor in California for a period of three (3) years after final payment is received from County.
  8. **Conditions Affecting Work:** 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 Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. 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 County are expressly stated in the Contract.

9. **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 (“County Data”) will at all times remain the property of County. Such County Data may not be used or copied for direct or indirect use by Contractor except as required for performance under this Contract or as permitted by County’s express prior written consent. All County Data and all materials, documents, data or information, including copies, specifically and directly created by Contractor or County for performance of this Contract, must be returned to County at the end of this Contract.
  
10. **Default – Reprourement Costs:** In case of Contract breach by Contractor, resulting in termination by County, County may procure the products and/or services from other sources.
  
11. **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. 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 County, on its own initiative, has already rendered such a final decision.
    2. 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 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 Contractor believes County is liable.
  - 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 the products 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 Deputy Purchasing Agent or his designee. Nothing in this section shall be construed as affecting County’s right to terminate the Contract for cause or terminate for convenience as stated in Paragraph 19, Termination.
  
12. **Drug-Free Workplace:** The Contractor hereby certifies that it maintains and will maintain throughout the life of the contract a drug-free workplace (Substance Abuse) policy. The Contractor will:
  1. Publish a statement notifying employees that employees must abide by applicable laws and regulations concerning the possession or use of alcohol and drugs..

2. Establish a drug-free awareness program 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 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.
13. **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. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions except to the extent Contractor is subject to the same emergency or declared disaster conditions and such conditions reasonably prohibit Contractor from servicing County during the emergency or declared disaster. The pricing set forth in Attachment B, Compensation/Invoicing, and Attachment C, Pricing, shall apply to serving County's needs regardless of the circumstances. Contractor shall keep the price firm (i.e. no increase in pricing) during the term of the Contract, even during an emergency and/or declared disaster. If Contractor is unable to supply the products and/or services under the terms of the Contract, then Contractor shall provide proof of such disruption.. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor must show both the emergency purchase order number and the Contract number.
14. **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, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If 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 County or others discover errors or omissions in the reports, files or other written documents

submitted by 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 County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

15. **Equal Employment Opportunity:** 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. 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, 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. 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. 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.

16. **News/Information Release:** Contractor shall not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract. Contractor must first obtain review and written approval of said news releases media contact from County through the County's DPA.
17. **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:      Gen-Probe Sales & Service, Inc.  
                                  Address:      10210 Genetic Center Dr.  
                                                       San Diego, CA 92121  
                                  Attention:      Contracts Department  
                                  Telephone:      (858) 410-8000  
                                  E-mail:      [DxContracts@hologic.com](mailto:DxContracts@hologic.com)

For County:              Name:      County of Orange HCA/Procurement and Contract  
                                                       Services  
                                  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)

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

18.      **Precedence:** The Contract documents consist of this Contract and its Attachments. 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, then the Attachments.
19.      **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 a. Cause includes, but is not limited to, any material breach of contract which remains uncured for thirty (30) calendar days after Contractor receives written notice thereof from County and any misrepresentation or fraud on the part of Contractor. County's exercise of its right to terminate the Contract shall relieve County of all further obligation. If the Contract is terminated pursuant to this provision, County will pay Contractor for any products ordered and shipped, up to the date of termination. Any Equipment leased to County during the Term will be returned to Contractor at County's expense, within thirty (30) days of the effective date of termination. Upon expiration or earlier termination of the Contract, Contractor shall return all County property in its possession.
20.      **Usage:** No maximum guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximations.
21.      **Usage Reports:** Upon request, Contractor shall submit usage reports to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted within ninety (90) calendar days of County's request.



22. **Promotional/Advertisement:** County owns all rights to the name, trademarks, logos and symbols of County. The use and/or reproduction of County's name, trademark, logo and/or symbol for any purpose, including commercial advertisement, promotional purposes, announcements, displays or press releases, without County's express prior written consent is expressly prohibited. No use or reproduction may state or imply that County endorses Contractor's products or services.
23. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by Contractor without prior written notice to County. Any attempt by Contractor to subcontract any performance of this Contract without prior written notice of County shall be invalid and shall constitute a breach of this Contract. Upon Contractor's notice that a subcontractor will be used, County may terminate this Contract immediately without penalty should County not agree to the use of such subcontractor in performance of this Contract.
24. **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 without penalty. 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).
25. **Debarment:** Contractor certifies that neither Contractor nor, to the best of its knowledge, 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. County has the right to terminate this Contract immediately without penalty, if Contractor is or becomes the subject of any debarment or pending debarment, declared ineligible, or any voluntary exclusion from participation by any state or federal department or agency.
26. **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, 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.

27. **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.
28. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of 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, County shall have the right to terminate the Contract, either in whole or in part, immediately without penalty. The rights and remedies of County provided in this Paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
29. **Parking for Delivery Services:** County shall not provide free parking for delivery services.
30. **Use Restrictions:** Products are only intended for the uses listed in the applicable operator's manual or instructions for use and are subject to the specifications and requirements set forth therein. County assumes all risks associated with non-listed uses of Products and/or use of Products which is inconsistent with those specifications and requirements in effect at the time this Contract is executed, unless a different specification or requirement is authorized by Contractor or a third party on behalf of Contractor and shall hold Contractor harmless from any claim for any such uses. County is not licensed to, and agrees not to: (a) resell any Product, unless otherwise authorized by Contractor in writing; (b) transfer, or distribute any Product, directly or indirectly, to any third party for any purpose or use, unless authorized by Contractor in writing; (c) use or allow anyone to dilute any Product; or (d) reverse engineer, disassemble, or conduct unauthorized analysis of any Product and/or its method of use.
31. **Limit of Liability:** EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM CONTRACTOR'S NEGLIGENT, RECKLESS OR INTENTIONAL WRONGFUL ACTS OR OMISSIONS, AND EXCEPT FOR CONTRACTOR'S DEFENSE AND INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS CONTRACT, (A) CONTRACTOR IS NOT LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, SERVICE OR USE OF PRODUCT ORDERED OR FURNISHED PURSUANT TO THIS CONTRACT, OR FROM ANY CAUSE RELATING THERETO UNLESS EXPRESSLY AGREED TO BY THE PARTIES IN WRITING; AND (B) CONTRACTOR IS NOT LIABLE UNDER ANY LEGAL THEORY OR FOR ANY CAUSE WHATSOEVER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, FOR ANY AMOUNT IN EXCESS OF THE PRICE, FEE OR CHARGE THEREFOR RECEIVED BY CONTRACTOR.

(SIGNATURE PAGE FOLLOWS)

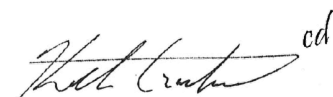
**CONTRACT SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract No. MA-042-22010349 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, the 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: Gen-Probe Sales & Service, Inc. A Subsidiary of Hologic, Inc.**

Keith Gantner  
Print Name

SVP, Commercial, Diagnostic Solutions  
Title

  
Signature

11/5/2021  
Date

Print Name

Title

Signature

Date

---

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

Purchasing Agent/Designee Authorized Signature:

Print Name

Deputy Purchasing Agent  
Title

Signature

Date

---

**Approved as to Form**

Office of the County Counsel

County of Orange, California

  
County Counsel Deputy

11/06/2021

## ATTACHMENT A

### SCOPE OF WORK

#### I. **BACKGROUND**

The Orange County Public Health Laboratory (OCPHL) currently offers *Chlamydia trachomatis* (CT), *Neisseria gonorrhea* (GC), HIV Viral Load, Hepatitis C Viral Load, and Trichomonas testing in support of Public Health Clinics, contract clinics, and Orange County Jail facilities. In June 2020, the Aptima SARS-CoV-2 Panther EUA assay for COVID-19 was implemented in order to meet the demands for automated COVID-19 testing and is an integral part of OCPHL's response to the COVID-19 pandemic. OCPHL tests approximately 20,000 patient specimens per year for Chlamydia and Gonorrhea by NAAT, 2,500 for HIV VL, 800 HCV VL, 500 Trichomonas and 36,000 COVID-19. Currently, 20,000 CT tests and 20,000 GC tests are run together in a single CT/GC assay. OCPHL is looking to continue purchasing under a Rental/Reagent Agreement for Food and Drug Administration (FDA) cleared test kits (EUA in the case of the Aptima SARS-CoV-2 test kits), all necessary ancillary products and instrumentation for processing and detection of Chlamydia, Gonorrhea, HIV, HCV, Trichomonas, and COVID-19 by molecular amplification technologies. In December 2020, OCPHL purchased a Panther Fusion module to accommodate additional tests for COVID-19 and Influenza A, B, and RSV. OCPHL will add several new tests to the existing automated systems (Panther and Panther Fusion). The tests to be added are; Fusion SARS-CoV-2 and Fusion Flu A/B/RSV for COVID-19 and Influenza detection, respectively.

#### II. **DELIVERABLES**

##### A. Test Kit Specifications:

**Contractor must have existing FDA cleared test kits for:**

1. CT and GC amplification and detection.
  - a. Specimen type to include; urine, endocervical, vaginal, male urethral, female and male urine specimens from symptomatic and asymptomatic persons.
  - b. Specificity greater than or equal to 97%.
  - c. Internal Control.
2. HIV-1 Viral Load assay
  - a. Limit < 20 copies/mL
  - b. Specimen type to include plasma, collected in Plasma Preparation Tube (PPT), Acid Citrate Dextrose (ACD), and Ethylenediaminetetraacetic acid (EDTA).
  - c. Random access, be able to load a mix of test orders from different samples and run at the same time.
  - d. Continuous access, be able to load samples, reagents, and consumables at any time.

- e. Low sample volume option (240 µL) with automated dilution factor.
- 3. HCV quantitative assay for the detection and quantitation of Hepatitis C virus (HCV) RNA, in fresh frozen human serum and plasma from HCV-infected individuals.
- 4. Trichomonas vaginalis assay, an assay capable of identifying infection cause by Trichomonas vaginalis by nucleic acid amplification.

**B. Instrument Specification Requirements:**

- 1. Reagent rental for CT/GC NAAT, HIV-1 quantitative assay, HCV quantitative, and Trichomonas.
- 2. Must be FDA cleared for all test kits listed above.
- 3. Automated platform for sample extraction, amplification, and detection.
- 4. Random access, ability to load a mix of test orders from different patient samples and run at the same time.
- 5. Continuous access, ability to load samples, reagents and consumables at any time.
- 6. Contamination prevention measures.
- 7. Flexibility to run small or large numbers of specimens.
- 8. Scan specimen bar codes to order tests.
- 9. Minimal pre and post test maintenance procedures.

**C. Laboratory Information System Interface (LIS) Specifications:**

- 1. Contractor shall have the capability to interface with Cerner Millennium Panther applications with capability to read Cerner bar code on patient sample tubes.

**D. Instrument Maintenance**

- 1. Instrument rental shall include insurance, maintenance, parts, repair and calibration at no additional cost to County.

**E. Contractual Requirements:**

- 1. Contractor shall provide a designated sales representative to County's account to help resolve technical and/or contractual issues.
- 2. There is no maximum guarantee as to annual usage requirement for the items in this Contract. The amount may increase or decrease based upon County's laboratory's demands.
- 3. Contractor must be able to deliver the items listed/requested within five (5) – seven (7) business days from receipt of order. Notwithstanding the foregoing, SARS-CoV-2 assays and related product shipments shall depend on availability and shall not be subject to any minimum purchase requirement or exclusively purchase requirement set forth in this Contract, if any. Given the rapidly escalating worldwide demand for SARS-CoV-2 testing, Contractor is

unable to provide specific dates for delivery nor commit to any quantity for the SARS-CoV-2 assay and therefore County cannot commit to any minimum purchase or exclusive purchase requirement. Upon receipt of an order, Contractor will provide the latest information available and collaboratively work on a potential timeline for delivery.

4. Contractor must provide notification to OCPHL for items placed on backorder for more than two (2) weeks from date of ordering.
5. Any changes in product availability, production, and/or specifications, Contractor shall endeavor to provide a notice in writing to OCPHL thirty (30) days in advance. Contractor shall provide notice of such changes in writing to OCPHL within two (2) days for any products subject to an order.
6. With the exception of SARS-CoV-2 assays and related items, Contractor must be able to fulfill urgent delivery requirement for overnight delivery. The cost associated with the expedited shipping (FedEx Overnight delivery) will be assumed by the County and based on product availability.
7. Contractor must allow replacements for items with expiration dates with a shelf life of three months or less as of the date of receipt. Return shipping is the responsibility of Contractor.

**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

### COMPENSATION AND INVOICING

1. **Compensation:** This is a fixed price Contract not to exceed the amount of \$7,500,000 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.

See Attachment C-Pricing

3. **Price Increase/Decreases:** No price increases will be permitted during the initial Contract term. County requires documented proof of cost increases on Contracts prior to any price adjustment after the initial Contract term. A minimum of thirty (30) calendar days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit.

4. **Firm Discount and Pricing Structure:** Intentionally Omitted.

5. **Contractor's Expense:** Contractor is 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 or emailed to [hcaap@ochca.com](mailto:hcaap@ochca.com), unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net thirty (30) calendar days after receipt of an invoice that is an approved invoice for products and/or services delivered in accordance with the terms set forth herein.

Billing must cover only products and/or services not previously invoiced. Contractor shall replace products that do not conform to published product specifications or are not received by Contractor or credit County when services are not provided as per the Panther Fusion Maintenance statement of work specified in Attachment C-Pricing .

Payments made by County shall not preclude the right of 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 products or services.

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

8. **Payment – Invoicing Instructions:** Contractor must provide an invoice on Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, Contractor must leave an invoice with each delivery. Each invoice must have a number and 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) or Purchase Order (PO) number
- 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 invoices to County for payment in accordance with the invoice instructions stated in this Contract 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 e-mail. 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 C

## PRICING

## REAGENT AND SPECIMEN COLLECTION KITS FOR THE DETECTION OF INFECTIOUS AGENTS:

LINE NO.	PRODUCT#	DESCRIPTION	PRICE/KIT
1	301040	APTIMA Urine Collection Device 50/kit	\$ 62.50
2	301041	APTIMA Swab Collection Device 50/kit	\$ 62.50
3	302101	Bleach Enhancer/Cleaning Kit	\$ 75.00
4	302923	APTIMA Combo 2, 100-Test <b>Kit</b> , Panther	\$ 927.00
5	303085	Lbld, Advanced Cleaning Solution, 255ml	No Charge
6	303094	APTIMA Combo 2, 250-Test Kit, Panther	\$ 2,317.50
7	303096	Run Kit, Panther	No Charge
8	501616	Spare Caps, 30ml Tube (501213) Diagnostics	\$ 87.50
9	CL0040	Caps, TCR/SEL. (CL0038) Diagnostics	\$ 65.00
10	CL0041	Spare Caps, Recon AMP & Probe, APTIMA, 100 caps/bag	\$ 75.00
11	303537	APTIMA TRICH; 250 Panther US V2	\$ 1,500.00
12	303536	APTIMA TRICH ; 100 Panther US V2	\$ 600.00
13	PRD-03565	Kit, Aptima HIV-1 Quant Assay (Panther)	\$ 3,500.00
14	PRD-03705	Aptima HCV Quant Dx Assay Kit (Hybrid) - see Attachment D	\$ 4,500.00
15	PRD-03546	Aptima Multi-Test Swab Collection Kit	\$ 62.50
16	301154C	Kit, APTIMA LPT-IVD Sales BOM	\$ 120.00
17	105575	APTIMA Urine Collection Tubes	\$ 120.00
18	105668	Kit, Penetrable Caps	No Charge
19	501604	Spare Caps, PP, 60ml , TCR APTIMA 2x50	No Charge
20	301110	APTIMA CT/GC Cntrl Kit (1 tray) IVD	No Charge
21	302807	Kit, Controls, ATV, 250	No Charge

LINE NO.	PRODUCT#	DESCRIPTION	PRICE/KIT
22	503762	Specimen Aliquot Tubes (SAT)	\$ 30.00
23	504415	Transport Tube Cap	\$ 10.00
24	PRD-03503	Aptima Specimen Diluent	\$ 260.00
25	PRD-03654	Aptima Specimen Diluent Kit	\$ 300.00
26	303095	PANTHER Unit: Two (2) - Two (2) Panther units (Serial # 2090000411 & 2090002487) are already on site.	\$ 0.00
27	ASY-07548	Fluorometer Upgrade Unit Two (2)-already on site	\$ 0.00
28	PRD-03488	General Purpose Tube Rocker , 120V -already on site	\$ 0.00
29	PRD-04173	PANTHER FUSION MODULE	\$95,000

Product	Annual Test Volume	Test Price*
Flu A/B/RSV assay	3,000	\$25.00
Panther Fusion SARS-CoV-2 Assay	13,000	\$8.00
Open Access	13,000	\$20.00
Aptima SARS-CoV-2 Assay	36,000	\$26.00

\*Gen-Probe Hologic does not sell individual tests. Please see table below for kit sizes and prices.

Product Number	Product Description	Kit Size	Price/Kit
PRD-04328	KIT, FLU A/B/RSV REAGENT CARTRIDGES, 96-TEST, FUSION	96	\$2,400.00
PRD-06391	Panther Fusion® SARS-CoV-2 Primer Probe Reagent Mix	160	\$1,280.00
PRD-04303	KIT, DNA/RNA enzyme cartridge, 96 reagent	96	\$1,920.00
PRD-06419	Aptima SARS-CoV-2 Assay, 250 Test Kit	250	\$6,500.00

Non-Committed items available to you at the prices listed below include the following:

Product Number	Product Description	Kit Size	Price
PRD-04336	KIT, FLU A/B/RSV CONTROLS, FUSION		No Charge
PRD-06420	Aptima SARS-CoV-2 Assay Controls		\$230.00
PRD-04479	PANTHER FUSION STARTUP KIT		No Charge
PRD-06404	Panther Fusion® SARS-CoV-2 Controls		\$230.00
PRD-04335	Fusion Fluids - Oil Reagent (1920 Tests)		No Charge
PRD-04333	Fusion Fluids - Recon Buffer (1920 Tests)		No Charge
PRD-04334	Fusion Fluids - Elution Buffer (2400 Tests)		No Charge
PRD-04331	Panther Fusion Extraction Reagent-S Box		No Charge
PRD-04332	Panther Fusion Internal Control Envelope		No Charge
PRD-04339	Panther Fusion Specimen Lysis Tubes		\$125.00
PRD-04000	Panther Fusion Tube Trays Box		No Charge

PRD-04304	Kit, Oil Reagent		No Charge
PRD-04305	Open Access Pack, Fusion		No Charge
PRD-04311	Primer/Probe Tubes, Open Access, Fusion		No Charge
PRD-04312	Primer/Probe Caps, Open Access, Fusion		No Charge
PRD-03455	Panther Run Kit for Real Time Assays	5000	No Charge
PRD-06660	Hologic Specimen Lysis Tube, Solid Cap (1,200/bag)	1,200	\$1,500.00
PRD-06554	HOLOGIC SPECIMEN LYSIS TUBE, SOLID CAP, (100 tubes per bag)		\$125.00
PRD-04423	SPECIMEN TRANSPORT MEDIUM 80mL		\$100.00
PRD-06997	Hologic Direct Load Tube Collection Kit (100/kit)	100	\$300.00
PRD-06952	Direct Load Capture Cap Collection Kit-FLOQ Swab (100/kit)	100	\$300.00
<b>EQUIPMENT UPGRADE AND EXPANSION (to be shipped as of the execution of this Contract):</b>			
PRD-05847	Panther Upgrade Continuous Fluid and Waste Module	1	\$25,000
PRD-05844	Panther Upgrade Continuous Fluid and Waste Module + MTU Expansion Module	1	\$59,500
PRD-06119	Panther Link Base Configuration	1	\$13,000
PRD-06120	Panther Link Connection	2	\$10,000
PRD-06121	Panther Link Display	1	\$5,000

**Please note:** Product shipments of SARS-CoV-2 testing and related products shall depend on availability. Given the rapidly escalating worldwide demand for SARS-CoV-2 testing, Hologic is unable to provide specific dates for delivery. Upon receipt of a Purchase Order, your Hologic team will provide the latest information available and collaboratively work on a potential timeline for delivery.

Miscellaneous related Laboratory Equipment and Supplies are authorized to be purchased under this Contract upon approval of County's Project Manager or Designee.

Hazardous Charge and Processing Fee: To the extent applicable, these charges are authorized on this contract upon approval of county's project manager or designee. The Processing Fee is authorized per order for items shipped from the Contractor's Applied Science Division.

Shipping Charges of Drop Ship Charges (items shipped to County Directly from Manufacturer): These charges are to be prepaid by the Contractor and allowed.

There shall be no shipping cost for additional fees charged to the County for items being returned, for Expired, short lot number, or incorrectly shipped to County. Contractor shall provide replacement for items returned. Return shipping cost are the responsibility of the contractor.

\*U.S. Food and Drug Administration (FDA) has issued an Emergency Use Authorization (EUA) to authorize the use of the Panther Fusion® SARS CoV-2 Assay on the Panther Fusion System by

authorized laboratories for the detection of nucleic acid from SARS-CoV-2 virus only and not for any other viruses or pathogens. The Panther Fusion SARS CoV-2 assay is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection and/or diagnosis of COVID-19 under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner. The Panther Fusion SARS CoV-2 assay has not been FDA cleared or approved. The Customer acknowledges and agrees that the Panther Fusion SARS CoV-2 Assay is only available for sale and use while the EUA is in effect. Hologic reserves the right to discontinue the Panther Fusion SARS CoV-2 Assay product at any time.

The U.S. Food and Drug Administration (FDA) has issued an Emergency Use Authorization (EUA) to authorize the use of the Aptima SARS CoV-2 assay on the Panther System by authorized laboratories for the detection of nucleic acid from SARS-CoV-2 virus only and not for any other viruses or pathogens. The Aptima SARS CoV-2 assay is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection and/or diagnosis of COVID-19 under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner. The Aptima SARS CoV-2 assay has not been FDA cleared or approved. The Customer acknowledges and agrees that the Aptima SARS CoV-2 assay is only available for sale and use while the EUA is in effect. Hologic reserves the right to discontinue the Aptima SARS CoV-2 assay product at any time.

#### **Quantitative Viral Load Assay Pricing**

<b>Product Category</b>	<b>Product #</b>	<b>Description</b>	<b>Quantity of Tests per Kit</b>	<b>(A) Estimated Annual Test Results (Quantity of Test Results per Contract Year)</b>	<b>(B) Annual Minimum Tests Purchased (Quantity of Purchased Kits per Contract Year)</b>	<b>(C) Annual Maximum Number of No Charge Kits (Quantity of No Charge Kits per Contract Year)</b>	<b>Price per Purchased Kit</b>
HCV Quant Dx Tests	PRD-03705	Aptima HCV Quant Dx, Kit - Panther	100 tests	650	10	2	\$4,500.00

In each annual period during the Term, based on County Estimated Annual Test Results (*Column A*) and Annual Minimum Tests Purchased (*Column B*) per Product listed in this Attachment, to accommodate County anticipated testing volume demands, County is entitled to receive up to two (2) Aptima HCV Quant 100 test kits (Item #PRD-03705)] at no additional charge ("No Charge Kits"; *Column C*).

For the avoidance of doubt, on a Product-by-Product basis, County may only receive No Charge Kits hereunder on a pro rata basis in proportion to the quantity of Product Kits purchased by County. To facilitate shipment of Products by Contractor, County must specify its intent to exercise redemption of each No Charge Kit at the time of order placement and such intent shall be confirmed by Contractor.

To maintain eligibility to receive No Charge Kits hereunder, County orders must: (i) track to its Annual Minimum Tests Purchased (*Column B*) for the Aptima HCV Quant Test, respectively, on a quarterly basis, (ii) meet its Annual Minimum Tests Purchased for the Aptima HCV Quant Test at the end of each Contract year, and (iii) maintain full compliance with all other obligations under the Contract and all Attachments.

The Parties acknowledge and agree that the No Charge Kits represent a discount or other reduction in price off County annual purchases of the respective Product(s) listed in this Attachment. Within forty-five (45) days of each anniversary of the Effective Date, Contractor shall provide County with an annual statement of the amount of the discount, identifying the specific

goods on which the discount has been earned. County shall properly report and appropriately reflect such discount as required by law.

Contractor reserves the right to perform a business review of the Product usage, test volume and pricing at any time, and may (i) adjust pricing, number of Estimated Annual Test Results, number of Annual Minimum Tests Purchased and/or number of No Charge Kits or (ii) discontinue providing No Charge Kits to County and terminate this Attachment, in each case upon thirty (30) days' prior written notice to County. Contractor shall also retain the right to transition County to a cost per kit pricing model upon thirty (30) days' prior written notice to County, provided consistent usage volume supports the transition. Any such adjustment and/or transition will be documented as a written amendment to the Contract.

#### **Panther system Maintenance:**

Contractor shall provide repair service for the equipment listed below:

EQUIPMENT/PRODUCT #	SERIAL #	SERVICE TYPE	ANNUAL COST
902615	2090000411	PANTHER STANDARD PLUS	\$24,500.00
902615	2090002487	PANTHER FUSION STANDARD PLUS	\$28,000.00
Subtotal			\$52,500.00
Discount and Allowances			(\$46,000.00)
Total Annual Cost			\$6,500.00

	<b><u>Panther STD Plus</u></b>	<b><u>Panther Fusion STD Plus</u></b>
Technical Phone Support	24/7	24/7
Pro360 Remote Support	24/7	24/7
On-site Service (with Pro360)	On-Site within 24 hrs.*	On-Site within 24 hrs.*
Business Review	\$6,000/each	1 per year
On-Site Application Service	On-Site within 48 hrs.*	On-Site within 48 hrs.*
Workflow Assessment	\$10,000	\$10,000
Pro360 & LIS Updates	2x per system*	2x per system*
Customer Care Call	2x per year*	2x per year*
Preventive Maintenance	1x per year*	1x per year*
Assay Verification Support	\$6,000	\$6,000
Additional Operator Training	\$6,000	Included (1 per year)
Factory Authorized Updates/Modification	Included	Included
System Relocation	\$450/hr. plus transportation costs, if applicable (4 hrs. min) * after hrs./wknds \$750/hr. (4 hr. min)	\$450/hr. plus transportation costs, if applicable (4 hrs. min) * after hrs./wknds \$750/hr. (4 hr. min)
Purchased System	\$24,500 per year	\$28,000 per year
<b>Reagent Rentals</b>	<b>\$3,000 per year</b>	<b>\$3,500 per year</b>

\*On-site service available Monday – Friday, 8:30 AM – 5:30 Pm (local time) excluding company holidays.

#### **Limited Warranties and Exceptions for the Panther and Panther Fusion Maintenance**

- Contractor warrants that the Panther and Panther Fusion Maintenance Services provided hereunder will be performed in a professional manner.
- Contractor warrants that replacement parts furnished for the Panther systems are free from defects in material and workmanship from the date of installation for a period of thirty (30) calendar days. County warrants that, on the Effective

Date of this Contract, the Panther systems are in good working condition and have had and will continue to have all required routine maintenance in accordance with the Panther systems Operator's Manual provided to County. Contractor's sole obligation under this warranty is to repair or replace, at its sole discretion, any replacement parts furnished for the Panther systems that is deemed defective within the thirty (30) calendar day period.

3. ALL WARRANTIES FOR THE PANTHER SYSTEMS MAINTENANCE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED AND THOSE IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE.

#### **Miscellaneous**

1. County Obligation. Prior to any shipment of repair parts or visit by Contractor service representative for Panther system maintenance, County must perform all reasonable and pertinent diagnostic programs, tests, simple/basic troubleshooting on the Panther systems and provide an accurate description of failure/error, with Contractor's assistance.
2. Replaced or Removed Parts. All Panther system parts replaced or removed under this Contract are Contractor's property.
3. The Parties agree that the annual fee of the Panther Standard Plus and Panther Fusion Standard Plus service plans will increase when the warranty of the Panther Plus upgrades expires. Pricing will be effective after an amendment has been signed by both Parties acknowledging price changes.