

# Department of State Health Services

## Purchase Order

Dispatch via Print

<b>Payment Terms</b> Net 30	<b>Freight Terms</b> Prepaid & Allow	<b>Ship Via</b> BEST WAY	<b>Purchase Order</b> <b>HHSTX-4-0000335594</b>
If advertised by informal bid, Invitation for Offer, or Request for Proposal; all specifications, terms, and conditions set forth in the advertisement and vendor's conforming responses become a part of this numbered purchase order. Contractor guarantees goods or services delivered meet or exceed numbered purchase order requirements.			<b>Date</b> 12/22/23
<b>All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number.</b>			<b>Revision</b> <b>Page</b> 1
			<b>Ship To:</b> 4546 - Austin:1100 W 49th St (DBGL) DEPARTMENT OF STATE HEALTH SERVICES 1100 W 49th St (DBGL) PO Box 149347 Austin TX 78756 United States

**Vendor:** 1330804655 9  
ILLUMINA INC  
12864 COLLECTION CENTER DR  
CHICAGO IL 606930128  
United States

**Bill To:** Invoice-HHSC Accounting  
HEALTH & HUMAN SERVICES COMMISSION  
4601 W Guadalupe St  
Austin TX 78751  
United States

**Fax:** 512/424-6901  
**Email:** HHSC\_AP@hhsc.state.tx.us

**Exempt Reason:** N/A

**Purchaser:** Mejia,Nicole

Line-Sch	Inventory Item ID - Line Description	Class/Item	Quantity	UOM	PO Price	Extended Amt	Due Date
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FY24 funding  
SS/S  
Requisition 241477 - Pricing per IFB HHS0014142  
PO Service Dates 12/22/2023 to 08/31/2024

Attached Conditions apply to this Purchase Order.

This purchase order is contingent upon the continued availability of lawful appropriations by the Texas Legislature and may be canceled at any time in whole or part without penalty. HHS or the agency does not commit to ordering specific quantities of goods/services or dollar amounts with respect to this purchase order. The agency shall be obligated to pay for only those goods and/or services ordered and received by the agency. Any funds not utilized by 08/31/2024 are automatically canceled.

Vendor contact  
Illumina, Inc.  
Nicole Berry  
858-202-4500  
customer@illumina.com  
Ryan Reynolds  
210-303-6065  
rreynolds@illumina.com

Agency contact  
Bonnie Oh  
512-776-2432  
Bonnie.Oh@dshs.texas.gov  
Texas Department of State Health Services Laboratory

PCS contact  
Nicole Mejia, CTCD, CTCM  
512-406-2650  
nicole.mejia@hhs.texas.gov

1-1	CAT#SP-103-1005; ILLUMINA PRODUCT CARE MISEQ SYSTEM HEALTH CHECK, M04955	938-63	1.00	EA	5213.00000	\$5,213.00	08/31/2024
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**Schedule Total**                     \$5,213.00

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**Email:** HHSC\_AP@hhsc.state.tx.us

Exempt Reason: N/A

**Purchaser:** Mejia,Nicole

Line-Sch	Inventory Item ID - Line Description	Class/Item	Quantity	UOM	PO Price	Extended Amt	Due Date
<b>Item Total for Line 1</b>						\$5,213.00	
2-1	CAT#SP-103-1005; ILLUMINA PRODUCT CARE MISEQ SYSTEM HEALTH CHECK, M05358	938-63	1.00	EA	5213.00000	\$5,213.00	08/31/2024
<b>Schedule Total</b>						\$5,213.00	
<b>Item Total for Line 2</b>						\$5,213.00	
3-1	CAT#SP-103-1005; ILLUMINA PRODUCT CARE MISEQ SYSTEM HEALTH CHECK, M06018	938-63	1.00	EA	5213.00000	\$5,213.00	08/31/2024
<b>Schedule Total</b>						\$5,213.00	
<b>Item Total for Line 3</b>						\$5,213.00	
4-1	CAT#SP-103-1005; ILLUMINA PRODUCT CARE MISEQ SYSTEM HEALTH CHECK, M03431	938-63	1.00	EA	5213.00000	\$5,213.00	08/31/2024
<b>Schedule Total</b>						\$5,213.00	
<b>Item Total for Line 4</b>						\$5,213.00	
5-1	CAT#SP-103-1005; ILLUMINA PRODUCT CARE MISEQ SYSTEM HEALTH CHECK, M04922	938-63	1.00	EA	5213.00000	\$5,213.00	08/31/2024
<b>Schedule Total</b>						\$5,213.00	
<b>Item Total for Line 5</b>						\$5,213.00	
6-1	CAT#20040676; ILLUMINA PRODUCT CARE NEXTSEQ 2000	938-63	1.00	EA	9641.00000	\$9,641.00	08/31/2024

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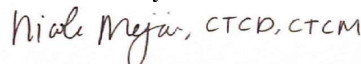
SYSTEM HEALTH CHECK

<b>Schedule Total</b>	\$9,641.00
<b>Item Total for Line 6</b>	\$9,641.00
<b>Total PO Amount</b>	\$35,706.00

No substitutions or cancellations are permitted without prior approval by Health & Human Services Commission. If contractor fails to deliver by promised delivery date (or reasonable time thereafter) or fails to meet requirements, Health & Human Services Commission reserves the right to purchase elsewhere and charge an increased cost and handling to contractor.

Over shipments will not be accepted unless authorized by Buyer prior to shipment. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the Health & Human Services Commission and Contractor to attempt to resolve all disputes arising under the contract.

Performance under this purchase order is acceptance of the attached affirmations and terms and conditions.

<b>Authorized By</b> 	<b>12/22/2023</b>
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## **REVISIONS AND SUPPLEMENTAL CONDITIONS TO IFB No. HHS0014142**

The Texas Department of State Health Service (“DSHS,” “System Agency,” or “HHS Agency”) and Illumina Inc. (“Contractor”) agree to the following revisions and supplemental conditions to Invitation for Bids (IFB) No. HHS0014142 for Service Contract for on-site system health checks for Illumina MiSeq and NextSeq sequencing instruments. **Changes, revisions, or terms and conditions submitted by Illumina Inc. as a Respondent to IFB No. HHS0014142 not contained herein are expressly rejected. Only revisions and supplemental conditions identified herein apply to any Purchase Order (PO) between the parties resulting from IFB No. HHS0014142.**

### **B. Revisions to IFB No. HHS0014142, Exhibit B, Contract Affirmation, Terms and Conditions**

#### **1. IFB No. HHS0014142 Exhibit B, Contract Affirmations v. 2.3, is revised as follows:**

- a. Item 5. Assignment is revised to read as follows:

##### **5. Assignment**

- A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.

#### **2. IFB No. HHS0014142 Exhibit B, HHS Uniform Terms and Conditions – Vendor V.3.3 (Effective: April 2021):**

The parties hereby agree to replace the HHS Uniform Terms and Conditions – Vendor V.3.2 (Effective: July 2022) originally part of Solicitation HHS0014142 with the current version, HHS Uniform Terms and Conditions – Vendor V.3.4 (Effective: November 2023), attached hereto and made a part of any Purchase Order issued pursuant to IFB No. HHS0014142.

#### **HHS Uniform Terms and Conditions – Vendor V.3.4 (Effective: November 2023) is revised to read as follows:**

- a. Section 4.1 Warranty is revised as follows:

##### **4.1 WARRANTY**

In accordance with the warranty related Supplemental Conditions provided in this Contract, Contractor warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Contractor has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

- i. Repair or replace all defective or damaged Work;

- ii. Refund any payment Contractor received from System Agency for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and,
- iii. Take necessary action to ensure that Contractor's future performance and Work conform to the Contract requirements.

b. Section 5.1 Ownership of Work Product is revised as follows:

#### **5.1 OWNERSHIP OF WORK PRODUCT – RESERVED**

c. Section 5.2 Contractor's Preexisting Works is revised as follows:

#### **5.2 CONTRACTOR'S PRE-EXISTING WORKS - RESERVED**

d. Section 5.3 Third Party IP is revised as follows

#### **5.3 THIRD PARTY IP - RESERVED**

e. Section 5.4 Agreements with Employees and Subcontractors is revised as follows:

#### **5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS - RESERVED**

f. Section 6.2 Damage to Government Property is revised as follows:

#### **6.2 DAMAGE TO GOVERNMENT PROPERTY**

- A. In the event of loss, destruction, or material damage (e.g. degraded performance, interruption of service, requires repair, etc.) to any System Agency or State of Texas owned, leased, or occupied property or equipment by Contractor or Contractor's employees, agents, Subcontractors, and suppliers, Contractor shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Contractor shall notify System Agency of the loss, destruction, or material damage of equipment or property within one (1) business day. System Agency shall notify Contractor of its assessment of the amount due for such property damage and Contractor shall pay or dispute such amount within 10 calendar days after Contractor's receipt of System Agency's notice.

g. Section 7.3 Responsibility is revised as follows:

#### **7.3 RESPONSIBILITY**

For each approved Project, the Contractor shall be responsible for all Work assigned under the Work Order. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of Services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget (if applicable, as determined by System Agency); and any other information or special conditions as may be necessary for the Work assigned.

h. Section 7.4 Termination is revised as follows:

## 7.4 TERMINATION

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to extend the performance period or add ancillary deliverables or services, only to the extent necessary. Orders cannot be terminated once shipped.

- i. Section 8.2 Agency's Right to Audit is revised as follows:

## 8.2 AGENCY'S RIGHT TO AUDIT

- A. As allowed by Texas law, Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, financial reports, books, records, supporting financial documents kept current by Contractor directly pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
  - B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
  - C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract.
  - D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
  - E. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.
- j. Section 9.4 Contractor Responsibility for System Agency's Termination Costs is revised as follows:

## 9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS – DELETED

## **C. Supplemental Conditions Incorporated into the Purchase Order Issued for IFB No. HHS0014142**

The following Supplemental Conditions are hereby incorporated into the Purchase Order to be issued for IFB No. HHS0014142:

Unless a different definition is specified in the IFB No. HHS0014142 Solicitation Document or IFB No. HHS0014142 Exhibit B, Uniform Terms and Conditions - Vendor Version 3.4 (UTCs), or the context clearly indicates otherwise, the definitions given to a term below apply whenever the term appears in these Supplement Conditions. All other terms have their ordinary and common meaning.

### **1. Definition to be ADDED:**

**“Covered Hardware”** means those portions of the Hardware that are covered by this Service Contract.

**“Current Specifications”** means Contractor’s written specifications for the Covered Hardware that apply to such Covered Hardware as provided in this Service Contract, but only if the purchased Service Contract provides that the Covered Hardware will conform to current specifications rather than the Original Specifications.

**“Documentation”** means Contractor’s user manual, package insert, and similar documentation, for the Covered Hardware in effect on the date that such Covered Hardware shipped from or provided by Contractor. 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 Contractor. **“EULA”** means the end user license agreement for Software.

**“Facility”** means the physical address where Covered Hardware is located. **“Hardware”** means Contractor branded instruments, accessories, or peripherals.

**“Original Specifications”** means Contractor’s written specifications for the Covered Hardware in effect on the date that such Covered Hardware shipped or provided by Contractor.

**“Original Terms”** means the Contractor terms and conditions of sale in effect on the date the Covered Hardware was shipped from or provided by Contractor setting forth the terms and conditions of HHS Agency’s purchase and use of such Covered Hardware, components thereof, and Software.

**“Service Contract”** means “Contract” as defined in the IFB No. HHS0014142 Solicitation Document.

**“Site”** means the smallest definable room that contains the Covered Hardware.

**“Software”** means Contractor branded software provided by Contractor 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.

**“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 this Service Contract.

**“Term”** means the length of the term of the Service Contract.

### **2. Supplemental Conditions**

- 1. Response Time and On-site Support.** Contractor will use commercially reasonable efforts to respond to HHS Agency’s requests for service within the time period specified in this Service Contract. All requests for service must be made through Contractor’s customer support organization (“**HHS Agency Solutions**”). Please refer to Contractor’s website for HHS Agency Solutions contact information. Contractor 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 HHS Agency replacement parts or test equipment, exchanging HHS Agency’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, Contractor shall determine in its sole discretion whether and when any personnel or replacement parts or equipment are to be sent to HHS Agency’s site. Contractor shall respond to HHS Agency’s request for support in accordance with the average response time specified in this Service Contract. Contractor will provide a minimum number of on-site support visits as specified in this Service Contract if the HHS Agency has identified a specific need that can be fulfilled by the visit and if the HHS Agency 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, Contractor may provide fewer visits than

## Revisions and Supplemental Conditions to IFB No.HHS0014142

prescribed in this Service Contract.

2. **Software Support.** During the Contract Term, Contractor shall use commercially reasonable efforts to provide all Software updates and qualified Software upgrades in accordance with the terms of this Service Contract as such materials become commercially available for distribution. HHS Agency's use of all Software, updates, and upgrades of Software shall be subject to this Service Contract and the Original Terms.
3. **Hardware Support.** During the Contract Term, Contractor shall use commercially reasonable efforts to install mandatory Hardware updates in accordance with the terms of this Service Contract as such materials become available for distribution. Whether a Hardware update is mandatory shall be determined by Contractor in its sole discretion. Contractor shall reschedule Hardware updates to coincide with preventive maintenance visits. If HHS Agency requests that such Hardware updates occur at a time or date other than during preventive maintenance visits, Contractor may, at its sole discretion, charge HHS Agency for any costs and expenses incurred in connection with such Hardware update visit. All updated Hardware and components thereof and HHS Agency's use of the same shall be subject to this Service Contract and the Original Terms.
4. **Hardware Repairs.** Contractor shall use commercially reasonable efforts to repair Covered Hardware reported by HHS Agency and deemed inoperable by Contractor's HHS Agency Solutions personnel. Contractor's sole obligation hereunder is to provide parts and labor according to the terms of this Service Contract and is limited to only repair or replacement of Contractor branded parts originally provided by Contractor to HHS Agency. All repaired or replaced items and HHS Agency's use of the Covered Hardware including the repaired or replaced components shall be subject to this Service Contract 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.
5. **Documentation Updates.** Contractor shall use commercially reasonable efforts to provide updates to Documentation according to the terms of this Service Contract as they become available for distribution. Whether a Documentation update is mandatory shall be determined by Contractor in its sole discretion. All updates to Documentation and HHS Agency's use of the Documentation shall be subject to this Service Contract and the Original Terms.
6. **Replacement Parts.** All replacement parts and components provided by Contractor will be new or refurbished, in Contractor'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 Contractor. All replaced parts and components and HHS Agency's use of the Covered Hardware including the replaced parts and components shall be subject to this Service Contract 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. **Loaner Hardware.** Contractor may choose to provide, in its sole discretion, loaner hardware or components to HHS Agency to substitute for the Covered Hardware or a component thereof, while service is being provided. Contractor will be responsible for all costs associated with the shipment of such loaner hardware or components to HHS Agency's Site, exclusive of any taxes or duties that would normally be paid by HHS Agency, which are the sole responsibility of HHS Agency. Loaner hardware or components shall be certified by Contractor's HHS Agency Solutions using the same criteria as used for new hardware or components. Loaner hardware or components shall remain the sole property of Contractor, and must be returned within 30 days of Contractor's request. HHS Agency's use of loaner hardware or components shall be subject to Contractor's current terms and conditions of sale that apply to such loaner hardware or component, provided HHS Agency review and approval of same.
8. **Preventative Maintenance Visits.** Contractor will provide a preventative maintenance on-site visit according to the terms of This Service Contract, which may result in two to three days of system down time to HHS Agency. Contractor shall cooperate with HHS Agency 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 Contractor 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 this 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 HHS Agency's inability to provide a sufficient time period for such services and down time, Contractor shall not be obligated to provide a substitute preventative maintenance visit. Contractor 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.
9. **HHS Agency 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 Contractor's site requirements found in the Documentation or



## Revisions and Supplemental Conditions to IFB No.HHS0014142

not in accordance with its Documentation may have their performance adversely affected, and are therefore not guaranteed hereunder. The HHS Agency agrees to use the Covered Hardware in a safe and reasonable manner pursuant to the Documentation and the Original Terms.

- b. Access: The HHS Agency will provide Contractor 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 Contractor to service the Covered Hardware.
- c. Data Back-up and Security: The HHS Agency 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 HHS Agency 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 HHS Agency's network.
- e. Representative: A representative of HHS Agency will be present on-site at all times service is being performed by Contractor's designated service personnel.
- f. Toxic/BioHazardous Substances: The HHS Agency will notify Contractor in writing if any Covered Hardware is used for analysis of toxic, hazardous or dangerous substances. Such Covered Hardware must be decontaminated by HHS Agency in accordance with Contractor's decontamination procedures and HHS Agency shall fax a completed and executed Decontamination Certificate to HHS Agency Solutions before any service may be performed on the Covered Hardware.
- g. Environment: The HHS Agency agrees to provide Contractor's designated service personnel with a safe environment for their work.
- h. Disposal of Waste Products: The HHS Agency is responsible for the proper disposal of waste products that result from maintenance and service work on the Covered Hardware.
- i. Facilities: The HHS Agency is responsible for ensuring that the Site will adhere to Contractor's site requirements found in the Documentation or Specifications. Any material deviation from Contractor's site requirements affecting the proper functioning of the Covered Hardware shall relieve Contractor of its obligations under this Agreement, including without limitation, under this Service Contract.

**10. Exclusions and Restrictions.** The terms of this Service Contract cover maintenance and repair for conditions that result from normal use and operation as described in the Documentation for the Covered Hardware. Contractor 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 Contractor authorized personnel, improper storage, improper handling, or use contrary to any instructions issued by Contractor 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 Contractor;
- 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 Contractor;
- 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 Contractor;
- 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.

**11. Relocation of Hardware.** HHS Agency agrees not to relocate Covered Hardware to a different Facility. If relocation of Covered Hardware to a different Facility becomes necessary, the parties will amend this Service Contract to accommodate said relocation.

**12. Export of Hardware.** HHS Agency agrees not to move or relocate Covered Hardware outside of the country to which Contractor originally shipped it without the expressly written authorization of an officer of Contractor.

**13. Recertification Requirement.** Hardware not under an existing Service Contract is only eligible for a Service Contract if Contractor has inspected the Hardware and its ancillary equipment and provided a written notice to HHS Agency that the

## Revisions and Supplemental Conditions to IFB No.HHS0014142

Hardware is eligible for a Service Contract ("**Recertification Requirement**"). HHS Agency acknowledges that Hardware may have to be repaired, at HHS Agency's sole expense, prior to being eligible for a Service Contract. Accordingly, Contractor recommends that HHS Agency renew its existing Service Contracts prior to their expiration.

14. **Renewal of Service Contract.** If HHS Agency renews the Service Contract on a piece of Covered Hardware prior to the expiration of the Service Contract Contractor will waive the Recertification Requirement.
15. **Non-Transferable.** All Service Contracts are personal to the original HHS Agency of the Covered Hardware and may not be transferred or assigned to any third party.
16. **Unauthorized Activities.** HHS Agency 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. HHS Agency further agrees that the contents of and methods of operation of the Materials are proprietary to Contractor and the Materials contains or embodies trade secrets of Contractor.
17. **Limited Liability.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE TO HHS AGENCY 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, TO THE ITEMS AND SERVICES PROVIDED HEREUNDER, CONTRACTOR'S PERFORMANCE HEREUNDER OR ANY OF THESE SUPPLEMENTAL CONDITIONS, HOWEVER ARISING OR CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE).  
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