Public Health England

Protecting and improving the nation's health

Appendix 1 PHE Public Health Microbiology Framework Agreement Order Form

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

FROM

Participating Authority:	**The Secretary of State for Health and Social Care acting as part of the Crown Public Health England** of 133-155 Waterloo Road, London, SE1 8UG **("the Authority")** (hereinafter referred to as 'PHE')
Service address:	As per PHE official purchase order
Invoice address:	PHE Accounts Payable Team Financial Accounting Services PHE Porton Down, Manor Farm Road Salisbury, Wiltshire SP4 0JG United Kingdom Email: payables@phe.gov.uk
PHE Procurement Lead:	Name: [redacted]
PHE Supplier Relationship Manager (SRM):	Name: [redacted]
PHE Internal Reference	To be quoted on all correspondence relating to this Order: **ECM** 8205

TO

Supplier Name:	Illumina Cambridge, Ltd 19 Granta Park, Great Abington , Cambridge, Cambridgeshire CB21 6DF ,United Kingdom
Contact Name: **E-mail:** **Telephone number:**	[redacted]

1. CONTRACT DETAILS

(1.1) Goods and/or Services [and deliverables] required:

1. Purchase of NextSeq®s 1000 Sequencing System under quote 4343885, but excluding any terms and conditions stated therein.

The quote details are as follows:

- The list of products with product descriptions for the business requirements.
- Supplier standard product codes (Catalogue number) for the platforms
- Unit Quantity
- Current Price Applicable

Catalog Number	Item Description	List Price (GBP)	Discount	Discounted Price (GBP)	Units	Term (Years)	Subtotal (GBP)
20038898	NextSeq 1000 Sequencing System	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
20040650	NextSeq 1000 Warranty Upgrade:	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
						[redacted] Total	[redacted] 837,345.60

(1.2) Contract Start Date: 23rd April 2021

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

£ 697,788 Ex VAT

(1.4) Contract End Date: 22nd April 2022

(1.5) Contract Extension Options: None

2. ADDITIONAL REQUIREMENTS

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

1. Quarterly review meetings are arranged to review the order quantities and delivery dates.
2.
3. The Contract is made up of the following documents:

   a) This Form of Contract for PHE_Scientific_Capital Purchase of NextSeq 1000 Illumina platforms
   b) Schedule 1: Public Health Microbiology Framework Agreement Call-off Terms and Conditions for Provision of Service with modifications as set out in Annex 1.
   c) Schedule 2: Public Health Microbiology Framework Agreement Terms and Conditions
   d) Schedule 3: Specification for project 2415 itt_2232 -PHE_Scientific Framework Lot 2
   e) Schedule 4: Contractor's proposal, clarifications via mails, and charges.

   (All of the above documents taken together (as amended in accordance with this Contract) being referred to as the "Contract").

4. If there is an inconsistency between any of the documents listed above, a higher listed document shall prevail over a lower listed document, i.e. Order of precedence of document will be as follow (a) shall prevail over all other documents; document (b) shall prevail over documents (c) shall prevail over documents (e) and then (d).

(2.2) Variations to Call-off Terms and Conditions for the Supply of Goods:

The variations/changes agreed to the PHE Public Health Microbiology Framework Agreement Call-off Terms and Conditions for the Supply of Goods are set out in Annex 1.

3. GOODS AND/OR SERVICES REQUIREMENTS (fill in if applicable)

(3.1) Key personnel of the Supplier to be involved in the Services [and deliverables]:

[redacted]

(3.2) Performance standards:

As agreed between the Supplier and PHE.

(3.3) Location(s) at which the Services are to be provided:

It is a nation wide contract , but current location are mentioned below:

Cambridge:

[redacted]

Box 236, Level 6 Pathology Laboratory Block,
Cambridge University Hospitals NHS Foundation Trust,
Cambridge Biomedical Campus,
Hills Road, Cambridge, CB2 0QQ

Manchester:

[redacted]

Public health laboratory Manchester,
Manchester Medical Microbiology Partnership
Clinical Sciences Building
Manchester Royal Infirmary
Oxford Road, Manchester,M13 9WZ

Leeds:

[redacted]

Department of Microbiology,
Old Medical School,
Leeds General Infirmary,
Leeds LS1 3EX

Birmingham:

[redacted]

Public health laboratory Birmingham
Heart of England NHS Foundation Trust
Bordesley Green East
Birmingham, B9 5SS

Bristol:

[redacted]

PHE South West Regional Laboratory
Pathology Sciences
Southmead Hospital
Bristol
BS10 5NB

Location for delivery will be specified in every purchase order.

(3.4) Quality standards:

As agreed between the parties.

(3.5) Contract monitoring arrangements:

Quarterly review meetings to be organised between the Supplier and PHE. Key account manager (or deputy) from Illumina to attend the meetings. This as agreed by both parties and in line with Schedule 8: SRM of the Framework Agreement, this includes but it is not limited to Implementation Plans for each site.

(3.6) Management Information and meetings

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

4. CONFIDENTIAL INFORMATION (if applicable)

(4.1) The following information shall be deemed Confidential Information:

N/A.

(4.2) Duration that the information shall be deemed Confidential Information:

N/A.

Annex 1

Where PHE is acting as a Participating Authority and Illumina is acting as the Supplier, the parties agree the following amendments to the PHE Framework Call-off Terms and Conditions for the Supply of Goods:

I.	Clause 2.1 amended to read as follows:	Subject to the further provisions of this Clause 2.1, the Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) agreed by the Parties in accordance with this Clause 2.1. Together with its Order Form, the Authority shall provide its anticipated ship schedule in respect of the Goods which are the subject of the order. The Supplier shall review this ship schedule and inform the Authority as soon as reasonably practicable following receipt whether it foresees any issues in meeting the delivery dates as set out in the ship schedule. In circumstances where the Supplier does not foresee any issues then the Supplier shall keep the ship schedule under review and inform the Authority in the event planned deliveries may subsequently be delayed. In circumstances where the Supplier is unable to meet the delivery times set out in the ship schedule, the Supplier shall inform the Authority that it is unable to meet such delivery times and provide the Authority with details about when it is likely to be able to deliver such Goods. The Supplier shall use reasonable endeavours to keep any delays in delivery to a minimum. In circumstances where the Goods are required in order to help the Authority deal with an outbreak, such reasonable endeavours may include the Supplier in prioritising the delivery of consumables to the Authority over other supplies that it may be required to make to other customers.
II.	Clause 3.1 amended to read as follows:	Without prejudice to the Authority's rights under Clause 4, risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract.
III.	Clause 3.2 amended to read as follows:	Ownership of the Goods shall pass to the Authority when the Goods are accepted by the Authority as specified in Clause 4.2 of this Contract.
IV.	Clause 4.2 amended to read as follows:	Without prejudice to the provisions of Clause 4.6 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 4.7 of this Schedule 2 of these Call-off Terms and Conditions, the Authority may, prior to formal acceptance of the Goods in accordance with this Clause 4.2, reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). Goods that are consumables and/or that do not require any form of installation shall be deemed accepted by the Authority on delivery and so the Authority shall visually inspect the Goods on delivery and may reject any Goods at the time of delivery that are obviously damaged or otherwise do not comply with the delivery note. Where the Goods are consumables, the whole of

		any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract. Where the Goods are instruments that require installation, acceptance of each individual instrument shall take place following successful installation, commissioning and testing of the Goods by the Supplier's staff, agents or carriers at such place as the Authority or a duly authorised person shall reasonably direct. Specifically, testing shall be defined as the manufacturer's own PhiX test or similar ("**the Test**") and upon successfully demonstrating to the Authority that the relevant hardware meets the manufacturer's specifications in the Test, the Authority shall confirm acceptance of the relevant hardware by signing the Authority confirmation. Notwithstanding the above, where reasonable access to the relevant site to carry out the Test is not afforded by the Authority to the Supplier, unless otherwise agreed acceptance shall be deemed to take place thirty (30) days from the date of delivery.
V.	Clause 4.3 amended to read as follows:	Without prejudice to the provisions of Clause 4.5 of this Schedule 2 of these Call-off Terms and Conditions, upon the rejection of any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall: 4.3.1 in respect of Rejected Goods: (i) where the Goods are rejected on delivery, stop making the delivery of the Rejected Goods and remove any Rejected Goods already unloaded from the relevant facility; or (ii) where the Goods are rejected after delivery but prior to acceptance, collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; 4.3.2 in respect of Defective Goods that require a replacement, collect the Defective Goods at the Supplier's risk and expense within ten (10) Business Days of it being determined that such Goods are Defective Goods that require replacement; and, in each case and without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods and/or the Defective Goods to the Authority subject to, in the case of Rejected Goods only, the Authority not cancelling its purchase obligations in accordance with Clause 4.5 of this Schedule 2 of these Call-off Terms and Conditions. If the Supplier requests and the Authority accepts that the Rejected Goods and/or the Defective Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and/or the Defective Goods and the Supplier shall promptly pay any such costs.
VI.	Clause 4.4 amended to read as follows:	Risk and title in respect of any Rejected Goods and/or Defective Goods shall pass to the Supplier at the time that such Rejected Goods and/or Defective Goods are taken back (or should have been taken back) into the possession of the Supplier in accordance with Clause 4.3 of this Schedule 2

		of these Call-off Terms and Conditions. If Rejected Goods and/or Defective Goods are not collected by the Supplier in accordance with Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions, the Authority may return the Rejected Goods and/or the Defective Goods (as appropriate) at the Supplier's risk and expense and charge the Supplier for the cost of storage from the date that such Goods should have been collected by the Supplier in accordance with Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions.
VII.	Clause 4.5 amended to read as follows:	Where the Authority rejects any Goods prior to the acceptance of such Goods as determined by Clause 4.2 of this Schedule 2 of these Call-off Terms and Conditions and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods. For the avoidance of doubt, the Authority can only cancel its purchase obligations in respect of Rejected Goods and not in respect of Defective Goods which shall be dealt with in accordance with Clause 4.6 of this Schedule 2.
VIII.	Clause 4.6 amended to read as follows:	Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 2 of these Call-off Terms and Conditions, if at any time during the relevant warranty period (as defined at Clause 4.6A below), all or any part of any Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall upon written request and without charge, promptly (which shall mean, subject to Clause 4.6B, within twenty (20) Business Days if reasonably practicable or such other time agreed by the Parties in writing acting reasonably if not) remedy the deficiency by repairing such Defective Goods (or, in circumstances where it is determined that repair is not possible (which shall always be the case in respect of Goods that are consumables) replacing the Defective Goods accordance with Clause 4.3 of this Contract).
IX.	New Clause 4.6A inserted after Clause 4.6 to read as follows:	The relevant warranties are as follows: (i) in respect of Goods that are consumables (but not custom consumables), the Supplier warrants that such consumables will conform to their Specifications until the later of (i) 3 months from the date of shipment from Supplier, or (ii) any expiration date or the end of shelf life pre-printed on such consumable by Supplier, but in either event no later than 12 months from the date of shipment; (ii) in respect of Goods that are custom consumables (i.e. consumables made to specifications or designs made by the Authority or provided to Supplier by, or on behalf of, the Authority), the Supplier only warrants that the custom consumables will be made and tested in accordance with

		Supplier's standard manufacturing and quality control processes. Supplier makes no warranty that custom consumables will work as intended by the Authority or for the Authority's intended uses; and (iii) in respect of Goods that are hardware, the Supplier warrants that such Goods will conform to their Specifications for a period of 12 months after acceptance of such hardware (as defined at Clause 4.2 of this Schedule 2 of these Call-off Terms and Conditions).
X.	New Clause 4.6B inserted after Clause 4.6A to read as follows:	The Supplier shall use reasonable endeavours to repair any Defective Goods that are hardware within ten (10) Business Days of it confirming that such Goods are Defective Goods in accordance with the requirements of this Contract. Where such repair is not possible within such time limits, the Supplier shall notify the Authority of the period within which the Supplier anticipates that it should be able to remedy the Defective Goods. If such time period is likely to have an impact on the Authority's business, then the Supplier and the Authority shall work together to determine any alternative arrangements that may be put in place to minimise the impact on the Authority during the repair period. Such alternative arrangements may include (i) the Supplier providing a loan instrument to the Authority during the repair period; (ii) the Supplier agreeing to carry out the tests in-house or at a third party's premises during the repair period; and/or (iii) the Authority arranging for the tests to be carried out at alternative premises of the Authority. In each case, these alternative arrangements shall be cost neutral to the Authority and so the Supplier shall pick up any reasonably and properly additionally incurred costs of the Authority which may arise as a result of such arrangements during the repair period.
XI.	New Clause 11.2 inserted after Clause 11.1 to read as follows:	Notwithstanding any other terms pre-printed on any purchase order, or any and all prior representations, proposals, understandings and all other agreements, either oral or written, express or implied, products purchased by the Authority are subject to the following restrictions: 11.2.1 <u>Regulatory:</u> In relation to hardware/equipment only it is acknowledged that the Product is labelled 'For Research Use Only'. The Authority specifically acknowledges that the Product has not been subject to any conformity assessment or declaration of conformity or certified, approved, cleared, or registered by any conformity assessment body or other regulatory entity or under any law or regulation whether foreign or domestic for any clinical or diagnostic purposes. The Authority further agrees to comply with all applicable laws and regulations when using, maintaining, and disposing of Product. 11.2.2 <u>Rights of Use upon Purchase</u>. Subject to these terms and conditions, the Authority is granted only a non-exclusive, non-transferable, personal, non-sublicensable right under Supplier's Core IP to use the Product in the facility expressly stated on any purchase order or in any delivery instructions associated with the respective purchase order ("**Authority's Facility**") and in accordance with the product's specifications and documentation

		available at https://www.illumina.com/products/all-products.html. All Software, whether provided separately, installed on, or embedded in a Product, is licensed to the Authority, not sold. Except as expressly stated in this Section no right or license under any intellectual property rights of Supplier or Supplier's affiliates is or are granted, expressly, by implication, or by estoppel, to the Authority, and any such rights are expressly reserved to Supplier and its affiliates. The Authority agrees that the contents of and methods of operation of the Product are proprietary to Supplier and the Product contains or embodies trade secrets of Supplier. "**Core IP**" means the intellectual property owned or controlled by Supplier and Supplier's affiliates, as of the date the Product ships, that pertain to or cover aspects or features of the Product (or use thereof) that are common to the Product in all applications and all fields of use but does not include Application Specific IP. "**Application Specific IP**" means the intellectual property rights owned by or licensed by Seller and Seller's affiliates that pertain to or cover aspects or features of the Product (and use thereof) only with regard to specific field(s) or specific application(s). The Authority is solely responsible for determining whether the Authority has all intellectual property rights that are necessary for the Authority's intended uses of the Product. For the avoidance of doubt, the Supplier does, however, warrant that all diagnostics, reagents and all other consumables sold under this agreement will be supplied inclusive of all intellectual property rights required for the purpose for which they were sold. (i) Collaboration with third parties. Without prejudice to clause 11.2.2(ii), the Authority may use Products at Authority's Facility in conjunction with shared projects, or where work is undertaken in collaboration with other parties at the Authority's Facility; (ii) Product Relocation. Where the Authority intends to relocate the Products it must provide Supplier with reasonable advance notification. The Authority is aware that Supplier may charge for any or all of the following services in relation to relocation of the products: decommissioning/de-installation; transportation to the new facility; and installation and the associated labour costs for the engineer(s). Where the Authority opts to facilitate all or any part of this process independently, or through another contractor, or otherwise without the express written permission of Supplier, any applicable warranty, guarantee or service/maintenance contract may be invalidated and or rendered null and void. In such circumstances Supplier offers to continue/recommence support/maintenance on condition that a health check is first carried out by Supplier's engineer(s). At Supplier's sole discretion, Supplier reserves the right to charge a fee for such a health check, with such a fee being quoted for before work is commenced.

		(iii) Resale of Equipment. Without prejudice to 11.2.2(ii) and subject to any fees due thereunder, where the Authority sells or otherwise transfers ownership of the Product(s) to a third party ("**New Buyer**"), Supplier will terminate all support (both physical, remote and by way of software updates) for the respective Product(s) unless and until New Buyer purchases a service/maintenance contract specific to New Buyer and, where applicable and in accordance with 11.2.2(ii), a health check.

Signature: [redacted]

For and on behalf of the Authority

Name: [redacted]

Job Title: [redacted]

Date: 22nd April 2021

Signature: [redacted]

For and on behalf of the Supplier

Name: [redacted]

Job Title: [redacted]

Date: 22-Apr-2021