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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
*DIVISION OF PUBLIC HEALTH SERVICES*

Lori A. Wenver  
Interim Commissioner

Patricia M. Tilley  
Director

29 HAZEN DRIVE, CONCORD, NH 03301  
603-271-4501 1-800-852-3345 Ext. 4501  
Fax: 603-271-4827 TDD Access: 1-800-735-2964  
www.dhhs.nh.gov

May 8, 2023

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division of Public Health Services, to enter into a **Sole Source** amendment to an existing contract with Illumina, Inc. (VC #263986), San Diego, CA, for preventative and corrective maintenance, and repairs, to the Public Health Laboratories MiSeq instrument used to detect COVID-19 variants and other diseases, by exercising a contract renewal option, by increasing the price limitation by \$62,061.58 from \$37,052.00 to \$99,113.58 and by extending the completion date from June 30, 2023 to July 31, 2025, effective upon Governor and Council approval. 100% Federal Funds.

The original contract was approved by Governor and Council on October 21, 2020, item #15, and most recently amended with Governor Approval on March 15, 2021, and submitted to Governor and Council on May 19, 2021, Informational Item L.

Funds are available in the following accounts for State Fiscal Year 2023, and are anticipated to be available in State Fiscal years 2024 and 2025, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**See attached fiscal details.**

**EXPLANATION**

This request is **Sole Source** because MOP 150 requires all amendments to agreements previously approved as sole source to be identified as sole source. In addition, the vendor is uniquely qualified to provide maintenance and support given that technology, chemistry, and software components of the instrument are intellectual property of Illumina, Inc., and no other vendor has the knowledge or expertise to provide maintenance and repair services.

The purpose of this request is to add funding in order to extend the contract through SFY 2025 in order to continue to provide periodic, preventative, and corrective maintenance services for the Department's MiSeq instrument #M03985 and to add instrument #M07547.

The Department will continue to monitor contracted services to ensure the Contractor:

- Provides on-site service within seventy-two (72) hours of receiving a request from the Department for services that cannot be provided remotely.
- Provides remote technical assistance by telephone and email to the Department as needed.
- Provides annual testing on both instruments to ensure they meet industry standards.

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 2

As referenced in Exhibit C-1 of the original agreement, the parties have the option to renew the agreement for up to three (3) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval. The Department is exercising its option to renew services for two (2) years and one (1) month of the three (3) years available.

Should the Governor and Council not authorize this request the Department will not be able to identify outbreaks caused by food borne or other bacterial species in a timely manner, thus negatively impacting the State's capacity in prevention and control of infectious disease transmissions or outbreaks.

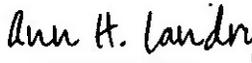
Area served: Statewide

Source of Federal Funds: Assistance Listing Number (formerly CFDA #) 93.323, FAIN #NU50CK000522

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted, .

DocuSigned by:

  
24BAB37EDBEB488..

Lori A. Weaver  
Interim Commissioner

**FISCAL DETAILS SHEET**  
**MiSeq Instrument Maintenance Services**  
**SS-2019-DPHS-02-MISEQ-01-A02**

**05-95-90-903010-18350000 HEALTH AND SOCIAL SERVICES, DEPARTMENT OF HEALTH AND HUMAN SVS; HHS: DIVISION OF  
PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, NH ELC**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Amount	Increase (Decrease)	Revised Amount
2021	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,450.50	\$0.00	\$6,450.50
2022	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,450.00	\$0.00	\$6,450.00
2023	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,451.00	\$2,876.58	\$9,327.58
2024	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$0.00	\$29,592.50	\$29,592.50
2025	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$0.00	\$29,592.50	\$29,592.50
		Sub Total		\$19,351.50	\$62,061.58	\$81,413.08

**05-95-90-903010-19570000 HEALTH AND SOCIAL SERVICES, DEPARTMENT OF HEALTH AND HUMAN SVS; HHS: DIVISION OF  
PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, ELC 3 COMPONENTS-COVID-19**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Amount	Increase (Decrease)	Revised Amount
2021	024-5000225	Maintenance - Other Than Building and Grounds	90183536	\$17,700.50	\$0.00	\$17,700.50
		Sub Total		\$17,700.50	\$0.00	\$17,700.50

<b>Overall Total</b>	\$37,052.00	\$62,061.58	\$99,113.58
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**State of New Hampshire  
Department of Health and Human Services  
Amendment #2**

This Amendment to the MiSeq Instrument Maintenance Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Illumina, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on October 21, 2020, (Item #15), and as amended and approved by the Governor on March 15, 2021, and submitted to Governor and Executive Council on May 19, 2021 (Informational Item L), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 18, and Exhibit C-1, Revisions to Standard Contract Language, Section 2. Renewal, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement, increase the price limitation, and modify the Scope of Services to support continued delivery of these services; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree to amend as follows:

1. Form P-37, General Provisions, Block 1.6, Account Number, to read:

05-95-90-903010-18350000  
05-95-90-903010-19570000

2. Form P-37 General Provisions, Block 1.7, Completion Date, to read:

July 31, 2025

3. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:

\$99,113.58

4. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:

Robert W. Moore, Director.

5. Modify Exhibit A, Scope of Services, Section 2. Scope of Work, Subsection 2.1, to read:

2.1. The Contractor shall provide all necessary maintenance for the Department's Illumina MiSeq instrument (Serial #M03985), and MiSeq instrument (Serial #M07547), hereinafter called "the instruments," and all periodic, preventive, and corrective maintenance in accordance with the Contractor's Product Care MiSeq Silver Support Plan (Catalog #'s 20019983 & SP-103-1005), and Exhibit A-2 – Amendment #2, Illumina Service Quote #4340862 and Exhibit A-3 – Amendment #2, Illumina Service Quote #4505627, and includes, but is not limited to:

6. Modify Exhibit B, Methods and Conditions Precedent to Payment, Section 2, to read:

2. Payment for services shall be made as follows:

2.1. Immediately upon Governor and Council approval of this Amendment #2, the Contractor shall submit one (1) invoice to the Department in the amount of \$9,327.58, and no later than June 30, 2023.

2.2. The Contractor shall submit one (1) invoice to the Department in the amount of \$29,592.50 by June 1, 2024.

- 2.3. The Contractor shall submit one (1) final invoice to the Department in the amount of \$29,592.50 by June 1, 2025.
- 2.4. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available. The Contractor will keep detailed records of their activities related to this contract.
- 2.5. Invoices must be mailed or emailed to:

Financial Administrator  
Department of Health and Human Services  
Division of Public Health  
Attn: Public Health Laboratories  
29 Hazen Drive  
Concord, NH 03301  
[DHHS.DPHS.Contract@dhhs.nh.gov](mailto:DHHS.DPHS.Contract@dhhs.nh.gov)

7. Add Exhibit A-2, Illumina Service Quote #4505581, dated March 14, 2023, which is attached hereto and incorporated by reference herein.
8. Add Exhibit A-3, Illumina Service Quote #4505627, dated March 14, 2023, which is attached hereto and incorporated by reference herein.

All terms and conditions of the Contract and prior amendments not modified by this Amendment remain in full force and effect. This Amendment shall be effective upon Governor and Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

5/17/2023

\_\_\_\_\_  
Date

DocuSigned by:  
*Patricia M. Tilley*  
\_\_\_\_\_  
Name: Patricia M. Tilley  
Title: director

Illumina, Inc.

May 10, 2023

\_\_\_\_\_  
Date

*N Berry*  
\_\_\_\_\_  
Name: Nicole Berry  
Title: SVP & Head of Americas Region

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

5/17/2023

Date

DocuSigned by:  
*Robyn Guarino*  
748734844941480

Name: Robyn Guarino

Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:



Quotation Number: 4505581

Quotation Date: Mar 14 2023

Expiration Date: Apr 13 2023

Page 1 of 2

**Illumina, Inc**  
5200 Illumina Way  
San Diego CA 92122-4616  
USA

Hereinafter referred to as "Illumina"

**CUSTOMER INFORMATION**

<b>Company Name</b>	New Hampshire Public Health Laboratory 29 Hazen Dr Concord, New Hampshire, USA 03301-6510
<b>Account Number</b>	6000023889
<b>Contact</b>	Chris Benton 603-271-4669 christopher.s.benton@dhhs.nh.gov
<b>Billing Entity</b>	HHS: Health Mgmt, Office Of
<b>Ship To</b>	New Hampshire Public Health Laboratory 29 Hazen Dr Concord , New Hampshire , USA
<b>Ultimate Consignee</b>	New Hampshire Public Health Laboratory USA

**HOW TO ORDER**

Purchase this quotation on MyIllumina  
<https://my.illumina.com/order-management/quotes/4505581>  
 Simply find the quote in your list or enter the quote number in the quote field and add to cart

Unable to complete this transaction? Provide your purchase order and a copy of the quotation to Customer Care at  
[customercare@illumina.com](mailto:customercare@illumina.com)  
 Toll Free: +1.800.809.ILMN (4566)

Need to register? Create an account at [my.illumina.com/welcome](https://my.illumina.com/welcome)

**Illumina Representative:**

Wasey Noori  
wnoori@illumina.com



## PRODUCT AND PRICING

Catalog Number	Item Description	List Price (USD)	Discount	Discounted Price (USD)	Units	Term (Year s)	Subtotal (USD)
20019983	<p><b>MiSeq Silver Support Plan</b> Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day on-site response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies. <b>Asset Number:</b> M03985 <b>Contract Term:</b> 3.50 months <b>Billing Frequency:</b> In-Full Advance Invoicing <b>Contract Start Date:</b> March 15, 2023 <b>Contract End Date:</b> June 30, 2023</p>	15,575.00	778.76 (5.00%)	14,796.23	1	0.30	4,375.23
SP-103-1005	<p><b>illumina® Product Care MiSeq® System Health Check</b> Includes labor, travel and replacement of all parts included in the PM Kit; Component Inspections; Subsystem Maintenance; System Requalification; and a SHC Certification document. Serves as a recertification for a system to be placed back under a service plan after a gap in coverage or relocation. <b>Asset Number:</b> M03985 <b>Billing Frequency:</b> In-Full Advance Invoicing</p>	5,213.00	260.65 (5.00%)	4,952.35	1	0.00	4,952.35
Subtotal							9,327.58
Final Investment (USD)							9,327.58

Tax is an estimate and is subject to change upon invoicing based upon the appropriate tax regulations.

Inco Terms: DAP: Delivered At Place

SS-2019-DPHS-02-MISEQ-01-A02

Illumina, Inc.

Illumina, Inc . 5200 Illumina Way  
San Diego  
www.illumina.com



Quotation Number: 4505627

Quotation Date: Mar 14 2023

Expiration Date: Apr 13 2023

Page 1 of 3

**Illumina, Inc**  
5200 Illumina Way  
San Diego CA 92122-4616  
USA

Hereinafter referred to as "Illumina"

**CUSTOMER INFORMATION**

<b>Company Name</b>	New Hampshire Public Health Laboratory 29 Hazen Dr Concord, New Hampshire, USA 03301-6510
<b>Account Number</b>	6000023889
<b>Contact</b>	Chris Benton 603-271-4669 christopher.s.benton@dhhs.nh.gov
<b>Billing Entity</b>	HHS: Health Mgmt, Office Of
<b>Ship To</b>	New Hampshire Public Health Laboratory 29 Hazen Dr Concord , New Hampshire , USA
<b>Ultimate Consignee</b>	New Hampshire Public Health Laboratory USA

**HOW TO ORDER**

Purchase this quotation on MyIllumina  
<https://my.illumina.com/order-management/quotes/4505627>  
 Simply find the quote in your list or enter the quote number in the quote field and add to cart

Unable to complete this transaction? Provide your purchase order and a copy of the quotation to Customer Care at  
[customercare@illumina.com](mailto:customercare@illumina.com)  
 Toll Free: +1.800.809.ILMN (4566)

Need to register? Create an account at [my.illumina.com/welcome](https://my.illumina.com/welcome)

**Illumina Representative:**

*Wasey Noori*  
[wnoori@illumina.com](mailto:wnoori@illumina.com)



## PRODUCT AND PRICING

Catalog Number	Item Description	List Price (USD)	Discount	Discounted Price (USD)	Units	Term (Years)	Subtotal (USD)
20019983	<p><b>MiSeq Silver Support Plan</b> Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day on-site response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies. <b>Asset Number: M03985</b> <b>Contract Term: 24.00 months</b> <b>Billing Frequency: Yearly Invoicing</b> <b>Contract Start Date: July 1, 2023</b> <b>Contract End Date: June 30, 2025</b></p>	15,575.00	778.75 (5.00%)	14,796.25	1	2.00	29,592.50
20019983	<p><b>MiSeq Silver Support Plan</b> Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day on-site response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies. <b>Asset Number: M07547</b> <b>Contract Term: 24.00 months</b> <b>Billing Frequency: Yearly Invoicing</b> <b>Contract Start Date: July 1, 2023</b> <b>Contract End Date: June 30, 2025</b></p>	15,575.00	778.75 (5.00%)	14,796.25	1	2.00	29,592.50



Quotation Number: 4505627

Quotation Date: Mar 14 2023

Expiration Date: Apr 13 2023

Page 3 of 3

Subtotal	59,185.00
Final Investment (USD)	59,185.00

*Tax is an estimate and is subject to change upon invoicing based upon the appropriate tax regulations.*

**Inco Terms:** DAP: Delivered At Place

**Payment Terms:** Net 30 Days

**SS-2019-DPHS-02-MISEQ-01-A02**

**illumina, Inc.**

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that ILLUMINA, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on May 12, 2023. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 931847

Certificate Number : 0006228814



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 12th day of May A.D. 2023.

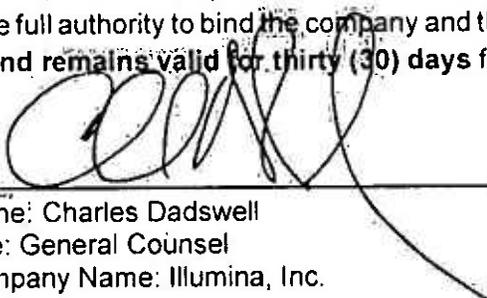
A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State

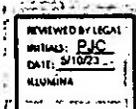
### CERTIFICATE OF VOTE/AUTHORITY

I, Charles Dadswell of Illumina, Inc. do hereby certify that:

1. I am the General Counsel of Illumina, Inc.
2. That Nicole Berry is hereby authorized on behalf of this company to enter into said contracts with the State of New Hampshire, and to execute any and all documents, agreements, and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate, and Nicole Berry is the duly elected Head of Region for the Americas of this company.
3. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person listed above currently occupies the position indicated and that they have full authority to bind the company and that this authorization was **valid thirty (30) days prior to and remains valid for thirty (30) days** from the date of this certificate.

  
Name: Charles Dadswell  
Title: General Counsel  
Company Name: Illumina, Inc.

05/15/2023  
Date.





Illumina, Inc.  
Illumina AB  
Illumina Australia Pty Ltd  
Illumina Belgium BVBA  
Illumina Brasil Produtos de Biotecnologia Ltda  
Illumina Canada ULC  
Illumina (China) Scientific Co. Ltd.  
Illumina (China), Beijing Branch  
Illumina (China), Guangzhou Branch  
Illumina Denmark ApS  
Illumina Finland Oy  
Illumina France SARL  
Illumina GmbH  
Illumina Hong Kong Ltd  
Illumina Italy Srl  
Illumina KK (Japan)  
Illumina Korea Ltd.  
Illumina Netherlands B.V.  
Illumina Norway AS  
Illumina Productos de España, S.L.U.  
Illumina Ireland Commercial Ltd  
Illumina Switzerland GmbH  
Advanced Liquid Logic, Inc.  
Conexio Genomics Pty Ltd. (Australia)  
FC Ops Corp.  
Illumina France Holding SARL  
thromboDx B.V.  
Edico Genome Corporation  
Epicentre Technologies Corp.  
Illumina Singapore Pte. Ltd  
Verinata Health, Inc.  
Illumina Cambridge, Ltd. (UK)  
Illumina India Biotechnology Private Ltd.  
Illumina New Zealand Ltd  
Illumina Trading (Shanghai) Co., Ltd.  
Illumina Trading (Shanghai) Co., Ltd. Beijing Branch  
Illumina US Manufacturing Operations, Inc.  
LLC Illumina Rus  
Global Genome Center, LLC  
Illumina Innovation Fund I, L.P.  
Illumina Software, Inc.  
Advanced Liquid Logic France SAS  
Affomix Corporation  
Avantome, Inc.

BlueGnome Pte. Ltd.  
BlueGnome, Inc.  
Cy Vera Corporation  
Epicentre Biotechnologies, LLC  
Genolomics Life Science Software Inc.  
Helix Holding, LLC  
Helixis, Inc.  
Illumina Iceland ehf  
Illumina Canada, Inc.  
Illumina Charitable Foundation  
Illumina Europe Limited (UK)  
Illumina Genomes Corporation  
Illumina GmbH France Branch  
Illumina GmbH Germany  
Illumina GmbH Italy Branch  
Illumina Singapore Pte. Ltd. Beijing Representative Office  
Illumina UK, Ltd.  
Lynx Therapeutics, GmbH Germany  
MedEnz, LLC  
Microbigen, LLC  
Moleculo, Inc.  
Myraqa, Inc.  
NextBio  
Ribo Therapeutics, Inc.  
Solexa Limited  
Solexa, Inc.  
Illumina Middle East FZE  
Illumina Taiwan Biotechnology  
Illumina Mexico Productos de Biotecnologia  
Illumina Colombia S.A.S.  
Longas Technologies Pty Ltd  
Illumina Turkey Biyoteknoloji Limited Sirketi  
Illumina Diagnostics (Shanghai) Co., Ltd  
Illumina Austria GmbH Inc

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MAC

Lori A. Shbinette  
Commissioner

Lisa M. Morris  
Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301  
603-271-4501 1-800-852-3345 Ext. 4501  
Fax: 603-271-4827 TDD Access: 1-800-735-2964  
www.dhhs.nh.gov

April 9, 2021

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**INFORMATIONAL ITEM**

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24, 2020-25, 2021-01, 2021-02, and 2021-04, Governor Sununu authorized the Department of Health and Human Services, Division of Public Health Services, to enter into a **Sole Source** amendment to an existing contract with Illumina, Inc. (VC# 263986), San Diego, CA, for preventative and corrective maintenance and repairs for the Public Health Laboratories MiSeq instruments used to detect COVID-19 variants and other diseases, by increasing the price limitation by \$17,700.50 from \$19,351.50 to \$37,052 with no change to the contract completion date of June 30, 2023. 100% Federal Funds.

The original contract was approved by Governor and Council on October 21, 2020, item #15.

Funds are available in the following account for State Fiscal Year 2021, and are anticipated to be available in State Fiscal Years 2022 and 2023, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-90-903010-1835 UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, EPIDEMIOLOGY AND LABORATORY CAPACITY FOR INFECTIOUS DISEASES (ELC)**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,450.50	\$0	\$6,450.50
2022	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,450	\$0	\$6,450
2023	024-500225	Maintenance - Other Than	90183506	\$6,451	\$0	\$6,451

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
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		Building and Grounds				
			<b>Subtotal</b>	<b>\$19,351.50</b>	<b>\$0</b>	<b>\$19,351.50</b>

**05-95-90-903010-1957- HEALTH AND SOCIAL SERVICES, DEPARTMENT OF HEALTH AND HUMAN SVS; HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF PUBLIC HEALTH LABORATORIES, ELC 3 COMPONENTS**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	024-500225	Maintenance – Other Than Building and Grounds	90183536	\$0	\$17,700.50	\$17,700.50
			<b>Subtotal</b>	<b>\$0</b>	<b>\$17,700.50</b>	<b>\$17,700.50</b>
			<b>Total</b>	<b>\$19,351.50</b>	<b>\$17,700.50</b>	<b>\$37,052</b>

**EXPLANATION**

This amendment is **Sole Source** because the contract was originally approved as sole source and MOP 150 requires any subsequent amendments to be labeled as sole source. Additionally, technology, chemistry, and software components of the instrument are intellectual property of Illumina, Inc., and no other vendor has the knowledge or expertise to provide maintenance and repair services.

The purpose of this amendment is to add funding for periodic, preventative, and corrective maintenance for the Department's MiSeq instrument, which is used to test COVID-19 samples for variant detection. The Department has used the instrument at a higher rate than normal during the COVID-19 pandemic which has increased the need for maintenance. The MiSeq instrument also performs surveillance for detection of disease outbreaks, such as those caused by E.coli, Salmonella, and Hepatitis C. The instrument allows the Department to detect outbreaks earlier, which can lead to faster outbreak control prevention, and intervention. This, in turn, mitigates the number of individuals within the State who will become ill.

Under the original Agreement, the Contractor is required to provide annual instrument inspections to ensure that the instrument is running according to industry standards. The Department will have access to remote technical assistance and on-site support for both the MiniSeq and MiSeq instruments within seventy-two (72) hours, when necessary. The Contractor will provide replacements parts and the labor, when requested.

The Department will monitor contracted services to ensure the Contractor:

- Provides on-site service within seventy-two (72) hours of receiving a request from the Department for services that cannot be provided remotely.
- Provides remote technical assistance by telephone and email to the Department as needed.
- Provides annual testing on both instruments to ensure they meet industry standards.

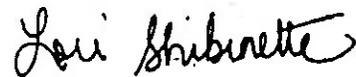
His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 3 of 3

Area served: Statewide

Source of Funds: CFDA #93.323, FAIN #NU50CK000522

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



Lori A. Shibinette  
Commissioner

**State of New Hampshire  
Department of Health and Human Services  
Amendment #1**

This Amendment to the MiniSeq Instrument Maintenance Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Illumina, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on October 21, 2020, (Item #15), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 18, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement, increase the price limitation, or modify the scope of services to support continued delivery of these services; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree to amend as follows:

1. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:

\$37,052.

2. Modify Exhibit A, Scope of Services Section 2 Scope of Work, Subsection 2.1 to read:

- 2.1. The Contractor shall provide all necessary maintenance for the Department's Illumina MiniSeq instrument (Serial #MNO1132), and MiSeq instrument (Serial # M03985) hereinafter called the instruments, and all periodic, preventive, and corrective maintenance in accordance with the Contractor's Product Care MiniSeq Silver Support Plan (Catalogue # 20019982) and the Contractor's Proposal # 4340862 for the MiniSeq and in accordance with the Exhibit A-1 Illumina Service Quote, Product Care MiSeq Silver Support Plan #20019983 for the MiSeq, which is attached hereto and incorporated by reference herein and includes, but is not limited to:

- 2.1.1. Any necessary replacement parts, which may include but are not limited to:

- 2.1.1.1. Pumps.

- 2.1.1.2. Pump components.

- 2.1.1.3. Syringes.

- 2.1.1.4. Air Filters.

- 2.1.1.5. Vacuum system components.

- 2.1.1.6. Hardware.

- 2.1.1.7. Coolant system components.

- 2.1.1.8. Reagents.

- 2.1.1.9. Flow cells.

- 2.1.2. Preventative maintenance no less than once every calendar year, which includes, but is not limited to:

- 2.1.2.1. An optical test.

- 2.1.2.2. A functional test.

- 2.1.2.3. A gravimetric test.

- 2.1.2.4. A thermal test of flow cells.
  - 2.1.2.5. An inspection of the Reagent chiller compartment.
  - 2.1.2.6. Travel and lodging expenses incurred to perform service.
  - 2.1.2.7. Hardware updates.
  - 2.1.2.8. Software updates.
3. Add Exhibit A-1 Illumina Service Quote, which is attached hereto and incorporated by reference herein.
  4. Modify Exhibit B, Methods and Conditions Precedent to Payment, Section 2. Subsections 2.1., to read:
    - 2.1 Upon approval by the Governor and Executive Council, the Contractor shall submit an invoice to the Department requesting payment in the amount of \$24,151 for the first year of services.

All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be effective upon the date of Governor and Executive Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

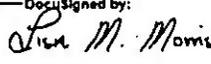


3/18/21

Date

Name: Nicole Berry  
Title: SVP, GM of the Americas

Illumina, Inc.

DocuSigned by:  


4/14/2021

Date

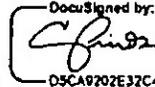
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Name: Lisa M. Morris  
Title: Director, Division of Public Health Svcs.

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

4/16/2021

Date

DocuSigned by:  


Name: Catherine Pinos

Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:



Exhibit A-1 Illumina Service Quote

Quotation Number: 4340862

Quotation Date: Apr 2 2021

Expiration Date: Apr 30 2021

Page 1 of 5

Illumina, Inc  
5200 Illumina Way  
San Diego CA 92122-4616  
USA

Hereinafter referred to as "Illumina"

**CUSTOMER INFORMATION**

<b>Company Name</b>	New Hampshire Public Health Laboratory 29 Hazen Dr Concord, New Hampshire, USA 03301-6510
<b>Account Number</b>	6000023889
<b>Contact</b>	Brooke Provost 603-271-9673 brooke.provost@dhhs.nh.gov
<b>Billing Entity</b>	HHS: Health Mgmt, Office Of
<b>Ship To</b>	New Hampshire Public Health Laboratory 29 Hazen Dr Concord, New Hampshire, USA 03301-6510
<b>Ultimate Consignee</b>	New Hampshire Public Health Laboratory USA

**HOW TO ORDER**

<p>For all <u>consumable</u> orders please submit your order online through MyIllumina (<a href="http://my.illumina.com">http://my.illumina.com</a>).</p>	<p>For all <u>other</u> orders please submit your institutional Purchase Order and a complete copy of this quotation to the attention of: Illumina Customer Service customerservice@illumina.com Toll Free: +1.800.809.ILMN (4566)</p>
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**Illumina Sales Representative:**

*Garrett Hartnett*  
+1 (858) 2555511 x1005511  
ghartnett@illumina.com



## PRODUCT AND PRICING

Catalog Number	Item Description	List Price (USD)	Discount	Discounted Price (USD)	Units	Term (Years)	Subtotal (USD)
SP-103-1005	<p>Illumina® Product Care MiSeq® System Health Check</p> <p>Includes labor, travel and replacement of all parts included in the PM Kit; Component Inspections; Subsystem Maintenance; System Requalification; and a SHC Certification document. Serves as a recertification for a system to be placed back under a service plan after a gap in coverage or relocation.</p> <p>Asset Number: M03985 Billing Frequency: In-Full Advance Invoicing</p>	4,710.00	105.00 (2.23%)	4,605.00	1	0.00	4,605.00
20019983	<p>MiSeq Silver Support Plan</p> <p>Includes full coverage for parts, labor, and travel; Reagent replacement upon HW failures; 1 PM; Remote Technical Support 18x5; 2 business day on-site response target*; control SW and HW updates; on-site applications support; discounts on advanced training; remote monitoring available. This is the most popular full-service plan balancing performance, productivity, and cost to deliver confidence and peace of mind. *select geographies.</p> <p>Asset Number: M03985 Contract Term: 12.00 months Billing Frequency: In-Full Advance Invoicing</p>	14,070.00	974.25 (6.92%)	13,095.75	1	1.00	13,095.75
Subtotal							17,700.75
Final Investment (USD)							17,700.75

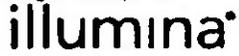


Exhibit A-1 Illumina Service Quote

Quotation Number: 4340862

Quotation Date: Apr 2 2021

Expiration Date: Apr 30 2021

Page 3 of 5

*Tax is an estimate and is subject to change upon invoicing based upon the appropriate tax regulations.*

**Payment Terms: Net 30 Days**

**INCO Terms: DAP: Delivered At Place**



Exhibit A-1 Illumina Service Quote

Quotation Number: 4340862

Quotation Date: Apr 2 2021

Expiration Date: Apr 30 2021

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### SHIP HOLD POLICY

In cases where this Quotation does not include a pre-defined ship schedule, the following ship hold terms shall apply:

- All orders must have a defined ship schedule. The initial ship date must be no later than three (3) months from the date the purchase order is received by Illumina (as provided in the Order Confirmation) and the entire order must be shipped complete within twelve (12) months from Illumina's receipt of the purchase order.
- Any exceptions to these ship hold terms must be agreed to in writing by Illumina and the Customer must pre-pay at least fifty percent (50%) of the purchase order amount of the affected shipments.
- Customers may request two (2) shipment delays for any single purchase order. The total months of delayed shipment for shipments associated with a single purchase order shall not exceed six (6) months.
- If Customer has requested a delayed shipment, Illumina reserves the right to change the lead time necessary to initiate Customer's first shipment (which may be longer than the lead time quoted at the time of the order placement).
- If Customer cannot take shipment in accordance with these terms, Illumina reserves the right to cancel the order in its entirety without any liability to the Customer.

Illumina does not supply plastics such as microplates or pipette tips for use in the listed assays and these are not included in the consumables pricing provided; however, as a result of the highly multiplexed nature of all assays, plastics alone contribute minimally to the final cost.



### Terms & Conditions

The offer contained in this document is automatically revoked by Illumina if not executed by Customer and a purchase order received by Illumina before 5:00 pm (based on the location of the Illumina quoting entity) on the expiration date shown on page 1 of this Quotation.

Customer agrees to provide to Illumina a purchase order for all of the items listed in this Quotation prior to its expiration date. The purchase order must reference this Quotation and match the amount stated.

By this Quotation, Illumina conditionally offers to Customer the Illumina products and/or services described above. This offer is conditional on, and may only be accepted by, Customer's agreement that Illumina's terms and conditions listed below or otherwise included with the product or service, as applicable to the specific product or service quoted ("Terms and Conditions"), is the sole and exclusive agreement between Customer and Illumina with respect to the particular product or service.

For the avoidance of doubt, any terms and conditions applicable to "Test Specific Products" that have a specific intended use in such products' documentation, as set forth in such terms and conditions, are applicable only to in vitro diagnostic products.

Additionally, notwithstanding the Illumina entity that is listed on the cover page of this Quotation, the parties understand and agree that in the event an Illumina affiliate provides products or services to Customer, such Illumina affiliate is the relevant quoting and contracting entity for such products or services under this Quotation and the relevant Terms and Conditions.

By submitting an order, Customer accepts and agrees that the Terms and Conditions referenced in this Quotation is the sole and exclusive agreement between Customer and Illumina with respect to the products and/or services as described above and accepts all other terms of this quotation. NOTWITHSTANDING THE FOREGOING, IF ILLUMINA AND CUSTOMER HAVE ENTERED INTO A VALID AND ENFORCEABLE SIGNED AGREEMENT GOVERNING THE ILLUMINA PRODUCTS AND/OR SERVICES DESCRIBED ABOVE, THE ORDER OF PRECEDENCE BETWEEN THE AGREEMENT AND THE TERMS AND CONDITIONS SHALL BE AS FOLLOWS: IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF THE AGREEMENT AND THE TERMS AND CONDITIONS, OR IF THE AGREEMENT INCLUDES ADDITIONAL TERMS NOT ADDRESSED IN THE TERMS AND CONDITIONS, THE AGREEMENT SHALL GOVERN WITH RESPECT TO SUCH TERMS.

<https://www.illumina.com/company/legal/terms-and-conditions.html>

15 mac



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH SERVICES**

Lori A. Shibinette  
Commissioner  
  
Lisa M. Morris  
Director

29 HAZEN DRIVE, CONCORD, NH 03301  
603-271-4501 1-800-852-3345 Ext. 4501  
Fax: 603-271-4827 TDD Access: 1-800-735-2964  
www.dhhs.nh.gov

September 28, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division of Public Health Services, to enter into a **Sole Source** contract with Illumina, Inc (VC# 263986), San Diego, CA in the amount of \$19,351.50, for preventative and corrective maintenance and repairs for the Public Health Laboratories MiniSeq instrument, with the option to renew for up to three additional years, effective upon Governor and Council approval through June 30, 2023. 100% Federal Funds.

Funds are available in the following account for State Fiscal Year 2021, and are anticipated to be available in State Fiscal Years 2022 and 2023, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**05-95-90-903010-1835 UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, EPIDEMIOLOGY AND LABORATORY CAPACITY FOR INFECTIOUS DISEASES (ELC)**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,450.50
2022	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,450
2023	024-500225	Maintenance - Other Than Building and Grounds	90183506	\$6,451
			<b>Total</b>	<b>\$19,351.50</b>

**EXPLANATION**

This request is Sole Source because the vendor is uniquely qualified to provide maintenance and support. Technology, chemistry, and software components of the instrument

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 2

are intellectual property of Illumina, Inc., and no other vendor has the knowledge or expertise to provide maintenance and repair services

The purpose of this request is provide periodic, preventative, and corrective maintenance for the Department's Miseq instrument. This instrument is used by the Department for infectious disease surveillance, outbreak investigations, and identification of new and emerging infectious diseases. For the past year, this instrument has been used at the PHL to sequence bacterial and viral pathogens for disease surveillance. In doing so, this has allowed for more efficient and accurate identification of disease outbreaks.

The vendor will be providing the Department with annual instrument inspections to ensure that the instrument is running according to standards. The Department will have access to remote technical assistance and on-site support within seventy-two (72) hours if need be. The vendor will provide replacements parts and the labor, when requested.

The Department will monitor contracted services using the following performance measures:

- Providing on-site service, within seventy-two (72) hours of receiving a request from the Department for services that cannot be done remotely.
- Providing remote technical assistance by telephone and email to the Department
- Providing yearly testing on the instrument to ensure it meets standards.

As referenced in Exhibit C-1 of the attached contract, the parties have the option to extend the agreement for up three (3) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval.

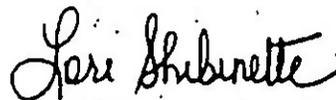
Should the Governor and Council not authorize this request the Department will not be able to identify outbreaks caused by foodborne or other bacterial species in a timely manner, thus negatively impacting the State's capacity in prevention and control of infectious disease transmissions or outbreaks.

Area served: Statewide

Source of Funds: CFDA #93.323, FAIN #NU50CK000522

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



Lori A. Shabinette  
Commissioner

FORM NUMBER P-37 (version 5/8/15)

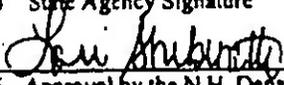
Subject: Miniseg Instrument Maintenance Services (SS-2019-DPHS-02-MISEO)

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS****1. IDENTIFICATION.**

1.1 State Agency Name NH Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-3857	
1.3 Contractor Name Illumina, Inc		1.4 Contractor Address 5200 Illumina Way, San Diego, CA 92122	
1.5 Contractor Phone Number 858.202.4500	1.6 Account Number 05-95-90-903010-1835	1.7 Completion Date 6/30/2023	1.8 Price Limitation \$19,351.50
1.9 Contracting Officer for State Agency Nathan D. White, Director		1.10 State Agency Telephone Number 603-271-9631	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Mark Van Oene SVP and CCO	
1.13 Acknowledgement: State of _____, County of _____ On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature  Date: 8/27/20		1.15 Name and Title of State Agency Signatory Lori Shiberre, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: Catherine Pinos On: 9/25/20			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly-licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

#### 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

#### 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person; on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**New Hampshire Department of Health and Human Services  
MiniSeq Instrument Maintenance Services**



**Exhibit A**

**Scope of Services**

**1. Provisions Applicable to All Services**

- 1.1. The Contractor agrees that, to the extent future legislative action by the New Hampshire General Court or federal or state court orders may have an impact on the Services described herein, the State Agency has the right to modify Service priorities and expenditure requirements under this Agreement so as to achieve compliance therewith.

**2. Scope of Work**

- 2.1. The Contractor shall provide all necessary maintenance for the Department's Illumina MiniSeq instrument (Serial #MNO1132), hereinafter called the instrument, and all periodic, preventive, and corrective maintenance in accordance with the Contractor's Product Care MiniSeq Comprehensive Plan (Catalogue # 20019982) and the Contractor's Proposal # 4259889, herein incorporated by reference and attached, which includes, but is not limited to:

- 2.1.1. Any necessary replacement parts including, but not limited to:

- 2.1.1.1. Pumps.
- 2.1.1.2. Pump components.
- 2.1.1.3. Syringes.
- 2.1.1.4. Air Filters.
- 2.1.1.5. Vacuum system components.
- 2.1.1.6. Hardware.
- 2.1.1.7. Coolant system components.
- 2.1.1.8. Reagents.
- 2.1.1.9. Flow cells.

- 2.1.2. Preventative maintenance no less than once every calendar year, which includes, but is not limited to:

- 2.1.2.1. An optical test.
- 2.1.2.2. A functional test.
- 2.1.2.3. A gravimetric test.
- 2.1.2.4. A thermal test of flow cells.

**New Hampshire Department of Health and Human Services  
MiniSeq Instrument Maintenance Services**



**Exhibit A**

- 
- 2.1.2.5. An inspection of the Reagent chiller compartment.
  - 2.1.2.6. Travel and lodging expenses incurred to perform service.
  - 2.1.2.7. Hardware updates.
  - 2.1.2.8. Software updates.
- 2.2. The Contractor shall perform instrument qualification no less than once every calendar year and certify that the instrument is performing to all applicable standards.
  - 2.3. The Contractor shall provide remote technical assistance, by telephone and email, as necessary to the Department, ensuring availability of assistance during the work days of Monday through Friday from 9am Eastern Standard Time until 6pm Eastern Standard Time.
  - 2.4. The Contractor shall provide on-site service, within 72 hours of receiving a request from the Department for service in instances of instrument performance failures that cannot be corrected by remote technical assistance provided to the Department.
- 3. Deliverables**
- 3.1. The Contractor shall provide signed documentation that the instrument is performing to all required standards after each instrument qualification.

**New Hampshire Department of Health and Human Services  
Miseq Instrument Maintenance Services**



**Exhibit B**

**Method and Conditions Precedent to Payment**

1. The State shall pay the Contractor an amount not to exceed the Form P-37, Block 1.8, Price Limitation for the services provided by the Contractor pursuant to Exhibit A, Scope of Services.
  - 1.1. This Agreement is funded by 100% Federal Funds from the United States Department of Health and Human Services, Division of Public Health, Centers for Disease Control and Prevention, Epidemiology and Laboratory Capacity for Infectious Diseases (CFDA #93.323), Federal Award Identification Number (FAIN) NU50CK000522.
  - 1.2. The Contractor agrees to provide the services in Exhibit A, Scope of Services in compliance with funding requirements. Failure to meet the scope of services may jeopardize the funded contractor's current and/or future funding.
2. Payment for services shall be made on an annual basis as follows:
  - 2.1. Upon approval by the Governor and Executive Council, the Contractor shall submit an invoice to the Department requesting payment in the amount of \$6,451 for the first year of services.
  - 2.2. The Contractor shall submit an invoice to the Department in the amount of \$6,450 no sooner than one year after the Contract Effective Date for the second year of services.
  - 2.3. The Contractor shall submit an invoice to the Department in the amount of \$6,451 no sooner than one year after the Contract Effective Date for the third year of services.
  - 2.4. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available. The Contractor will keep detailed records of their activities related to DHHS-funded programs and services.
  - 2.5. The final invoice shall be due to the State no later than forty (40) days after the contract Form P-37, Block 1.7 Completion Date. Address below:

Financial Administrator  
Department of Health and Human Services  
Division of Public Health  
Attn: Public Health Laboratories  
29 Hazen Drive  
Concord, NH 03301
  - 2.6. Payments may be withheld pending receipt of required reports or documentation as identified in Exhibit A, Scope of Services and in this Exhibit B.
3. Notwithstanding paragraph 18 of the General Provisions P-37, changes limited to adjusting encumbrances between State Fiscal Years, may be made by written agreement of both parties and may be made without obtaining approval of the Governor and Executive Council.

New Hampshire Department of Health and Human Services  
Exhibit C



**SPECIAL PROVISIONS**

**Contractors Obligations:** The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
2. **Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.
3. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
4. **Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.
5. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.
6. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.
7. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party funders for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party funders, the Department may elect to:
  - 7.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
  - 7.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;

Exhibit C – Special Provisions

Contractor Initials

*Ma Walker*

**New Hampshire Department of Health and Human Services  
Exhibit C**



- 7.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.

**RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:**

8. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period:
- 8.1. **Fiscal Records:** books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period, said records to be maintained in accordance with accounting procedures and practices which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
- 8.2. **Statistical Records:** Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
- 8.3. **Medical Records:** Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.
9. **Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
- 9.1. **Audit and Review:** During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
- 9.2. **Audit Liabilities:** In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.
10. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian.

New Hampshire Department of Health and Human Services  
Exhibit C



Notwithstanding anything to the contrary contained herein the covenants and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

11. **Reports: Fiscal and Statistical:** The Contractor agrees to submit the following reports at the following times if requested by the Department.
  - 11.1. **Interim Financial Reports:** Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
  - 11.2. **Final Report:** A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.
  
12. **Completion of Services: Disallowance of Costs:** Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.
  
13. **Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:
  - 13.1. The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.
  
14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.
  
15. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.
  
16. **Equal Employment Opportunity Plan (EEO):** The Contractor will provide an Equal Employment Opportunity Plan (EEO) to the Office for Civil Rights, Office of Justice Programs (OCR), if it has received a single award of \$500,000 or more. If the recipient receives \$25,000 or more and has 50 or



**New Hampshire Department of Health and Human Services  
Exhibit C**

more employees, it will maintain a current EEO on file and submit an EEO Certification Form to the OCR, certifying that its EEO is on file. For recipients receiving less than \$25,000, or public grantees with fewer than 50 employees, regardless of the amount of the award, the recipient will provide an EEO Certification Form to the OCR certifying it is not required to submit or maintain an EEO. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEO requirement, but are required to submit a certification form to the OCR to claim the exemption. EEO Certification Forms are available at: <http://www.ojp.usdoj/about/ocr/pdfs/cert.pdf>.

17. **Limited English Proficiency (LEP):** As clarified by Executive Order 13166, Improving Access to Services for persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, Contractors must take reasonable steps to ensure that LEP persons have meaningful access to its programs.
18. **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections:** The following shall apply to all contracts that exceed the Simplified Acquisition Threshold as defined in 48 CFR 2.101 (currently, \$150,000)

**CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

19. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.

When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:

- 19.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
- 19.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
- 19.3. Monitor the subcontractor's performance on an ongoing basis

**New Hampshire Department of Health and Human Services  
Exhibit C**



- 19.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- 19.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

**20. Contract Definitions:**

- 20.1. **COSTS:** Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.
- 20.2. **DEPARTMENT:** NH Department of Health and Human Services.
- 20.3. **PROPOSAL:** If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the services and/or goods to be provided by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.
- 20.4. **UNIT:** For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.
- 20.5. **-FEDERAL/STATE LAW:** Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from time to time.
- 20.6. **SUPPLANTING OTHER FEDERAL FUNDS:** Funds provided to the Contractor under this Contract will not supplant any existing federal funds available for these services.

*Ma. J. Walker*

New Hampshire Department of Health and Human Services  
Exhibit C-1



REVISIONS TO STANDARD CONTRACT LANGUAGE

1. Revisions to Form P-37, General Provisions

1.1. Section 4, Conditional Nature of Agreement, is replaced as follows:

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account in the event funds are reduced or unavailable.

1.2. Section 10, Termination, is amended by adding the following language:

10.1 The State may terminate the Agreement at any time for any reason, at the sole discretion of the State, 30 days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.

10.2 In the event of early termination, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement, including but not limited to, identifying the present and future needs of clients receiving services under the Agreement and establishes a process to meet those needs.

10.3 The Contractor shall fully cooperate with the State and shall promptly provide detailed information to support the Transition Plan including, but not limited to, any information or data requested by the State related to the termination of the Agreement and Transition Plan and shall provide ongoing communication and revisions of the Transition Plan to the State as requested.

10.4 In the event that services under the Agreement, including but not limited to clients receiving services under the Agreement are transitioned to having services delivered by another entity including contracted providers or the State, the Contractor shall provide a process for uninterrupted delivery of services in the Transition Plan.

10.5 The Contractor shall establish a method of notifying clients and other affected individuals about the transition. The Contractor shall include the proposed communications in its Transition Plan submitted to the State as described above.

2. Renewal

2.1. The Department reserves the right to extend this agreement for up to three (3) additional years, contingent upon satisfactory delivery of services, available funding, written agreement of the parties and approval of the Governor and Executive Council.

*Ma. J. [Signature]*

8/19/20



New Hampshire Department of Health and Human Services  
Exhibit D

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
  - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
    - 1.2.1. The dangers of drug abuse in the workplace;
    - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
    - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
    - 1.4.1. Abide by the terms of the statement; and
    - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency

Vendor Initials Ma. V. Cole

Date 8/19/20

New Hampshire Department of Health and Human Services  
Exhibit D



- has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
    - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

Vendor Name: Illumina, Inc

6.30.20

Date

Name: Mark Van Oene  
Title: SVP and CCO

Vendor Initials

Date 8/19/20

New Hampshire Department of Health and Human Services  
Exhibit E



**CERTIFICATION REGARDING LOBBYING**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

- Programs (indicate applicable program covered):
- \*Temporary Assistance to Needy Families under Title IV-A
  - \*Child Support Enforcement Program under Title IV-D
  - \*Social Services Block Grant Program under Title XX
  - \*Medicaid Program under Title XIX
  - \*Community Services Block Grant under Title VI
  - \*Child Care Development Block Grant under Title IV

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, 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 agreement (and by specific mention sub-grantee or sub-contractor).
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-1.)
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Illumina, Inc

Vendor Name:

6.30.20

Date

Name: Mark Van Oene  
Title: SVP and CCO

New Hampshire Department of Health and Human Services  
Exhibit F



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

New Hampshire Department of Health and Human Services  
Exhibit F



information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- 10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

PRIMARY COVERED TRANSACTIONS

- 11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - 11.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - 11.2. have not within a three-year period preceding this proposal (contract) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 11.3. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (I)(b) of this certification; and
  - 11.4. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

LOWER TIER COVERED TRANSACTIONS

- 13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 78, certifies to the best of its knowledge and belief that it and its principals:
  - 13.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 13.2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).
- 14. The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Vendor Name: Illumina, Inc.

6.30.20

Date

Name: Mark Van Oene  
Title: SVP and CCO

Vendor Initials

*Mo. Van Oene*

Date 8/19/20

New Hampshire Department of Health and Human Services  
Exhibit G



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO  
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND  
WHISTLEBLOWER PROTECTIONS**

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Vendor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJOP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination, Equal Employment Opportunity, Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G

Vendor Initials Ma. J. G.

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

New Hampshire Department of Health and Human Services  
Exhibit G



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

- 1. By signing and submitting this proposal (contract) the Vendor agrees to comply with the provisions indicated above.

Illumina, Inc

Vendor Name:

6.30.20

Date

Name: Mark Van Oene  
Title: SVP and CCO

Exhibit G

Vendor Initials Ma Van Oene

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

New Hampshire Department of Health and Human Services  
Exhibit H



CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Vendor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

- 1. By signing and submitting this contract, the Vendor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Vendor Name: Illumina, Inc

6. 30. 20

Date

Name: Mark Van Oene

Title:

SVP and CCO

New Hampshire Department of Health and Human Services



Exhibit I

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

(1) **Definitions.**

- a. **"Breach"** shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
- b. **"Business Associate"** has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. **"Covered Entity"** has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. **"Designated Record Set"** shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. **"Data Aggregation"** shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. **"Health Care Operations"** shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. **"HITECH Act"** means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. **"Individual"** shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. **"Protected Health Information"** shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



New Hampshire Department of Health and Human Services

Exhibit I

- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) Business Associate Use and Disclosure of Protected Health Information.

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business



New Hampshire Department of Health and Human Services

Exhibit I

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.

- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:

- o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
- o The unauthorized person used the protected health information or to whom the disclosure was made;
- o Whether the protected health information was actually acquired or viewed
- o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.
- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (I). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI

New Hampshire Department of Health and Human Services



Exhibit I

pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records; books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business

## New Hampshire Department of Health and Human Services



## Exhibit I

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**(5) Termination for Cause**

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

**(6) Miscellaneous**

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.

3/2014

Contractor Initials Ma. V. G.Date 8/19/20

New Hampshire Department of Health and Human Services



Exhibit I

- e. **Severability.** If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. **Survival.** Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) l, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Department of Health and Human Services

The State

*Lori Shubinette*

Signature of Authorized Representative

Lori Shubinette

Name of Authorized Representative

Commissioner

Title of Authorized Representative

8/25/2020

Date

Illumina, Inc

Name of the Contractor

*Mark Van Oene*

Signature of Authorized Representative

Mark Van Oene

Name of Authorized Representative  
SVP and CCO

Title of Authorized Representative

June 30, 2020

Date

New Hampshire Department of Health and Human Services  
Exhibit J



**CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY  
ACT (FFATA) COMPLIANCE**

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
  - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
  - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Contractor Name:

6.30.20

Date

Name:

Title: Mark Van Oene  
SVP and CCO

Contractor Initials

Date 8/19/20



New Hampshire Department of Health and Human Services  
Exhibit J

FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

33 080 4655

- The DUNS number for your entity is: \_\_\_\_\_
- In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

X  NO                      \_\_\_\_\_ YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

- Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

\_\_\_\_\_ NO                       X  YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

- The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



A. Definitions

The following terms may be reflected and have the described meaning in this document:

1. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
2. "Computer Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.
3. "Confidential Information" or "Confidential Data" means all confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Substance Abuse Treatment Records, Case Records, Protected Health Information and Personally Identifiable Information.

Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of the Department of Health and Human Services (DHHS) or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personal Information (PI), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.

4. "End User" means any person or entity (e.g., contractor, contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives DHHS data or derivative data in accordance with the terms of this Contract.
5. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.
6. "Incident" means an act that potentially violates an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of physical or electronic

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mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

7. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology or delegate as a protected network (designed, tested, and approved, by means of the State, to transmit) will be considered an open network and not adequately secure for the transmission of unencrypted PI, PFI, PHI or confidential DHHS data.
8. "Personal Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.
9. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
10. "Protected Health Information" (or "PHI") has the same meaning as provided in the definition of "Protected Health Information" in the HIPAA Privacy Rule, at 45 C.F.R. § 160.103.
11. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and amendments thereto.
12. "Unsecured Protected Health Information" means Protected Health Information that is not secured by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

**I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR**

**A. Business Use and Disclosure of Confidential Information.**

1. The Contractor must not use, disclose, maintain or transmit Confidential Information except as reasonably necessary as outlined under this Contract. Further, Contractor, including but not limited to all its directors, officers, employees and agents, must not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
2. The Contractor must not disclose any Confidential Information in response to a

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request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.

3. If DHHS notifies the Contractor that DHHS has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards.
4. The Contractor agrees that DHHS Data or derivative there from disclosed to an End User must only be used pursuant to the terms of this Contract.
5. The Contractor agrees DHHS Data obtained under this Contract may not be used for any other purposes that are not indicated in this Contract.
6. The Contractor agrees to grant access to the data to the authorized representatives of DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract.

**II. METHODS OF SECURE TRANSMISSION OF DATA**

1. Application Encryption. If End User is transmitting DHHS data containing Confidential Data between applications, the Contractor attests the applications have been evaluated by an expert knowledgeable in cyber security and that said application's encryption capabilities ensure secure transmission via the internet.
2. Computer Disks and Portable Storage Devices. End User may not use computer disks or portable storage devices, such as a thumb drive, as a method of transmitting DHHS data.
3. Encrypted Email. End User may only employ email to transmit Confidential Data if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
4. Encrypted Web Site. If End User is employing the Web to transmit Confidential Data, the secure socket layers (SSL) must be used and the web site must be secure. SSL encrypts data transmitted via a Web site.
5. File Hosting Services, also known as File Sharing Sites. End User may not use file hosting services, such as Dropbox or Google Cloud Storage, to transmit Confidential Data.
6. Ground Mail Service. End User may only transmit Confidential Data via *certified* ground mail within the continental U.S. and when sent to a named individual.
7. Laptops and PDA. If End User is employing portable devices to transmit Confidential Data said devices must be encrypted and password-protected.
8. Open Wireless Networks. End User may not transmit Confidential Data via an open

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wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.

9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End User's mobile device(s) or laptop from which information will be transmitted or accessed.
10. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).
11. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

### III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS

The Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or permitted under this Contract. To this end, the parties must:

#### A. Retention

1. The Contractor agrees it will not store, transfer or process data collected in connection with the services rendered under this Contract outside of the United States. This physical location requirement shall also apply in the implementation of cloud computing, cloud service or cloud storage capabilities, and includes backup data and Disaster Recovery locations.
2. The Contractor agrees to ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
3. The Contractor agrees to provide security awareness and education for its End Users in support of protecting Department confidential information.
4. The Contractor agrees to retain all electronic and hard copies of Confidential Data in a secure location and identified in section IV. A.2
5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP/HITECH compliant solution and comply with all applicable statutes and regulations regarding the privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a

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whole, must have aggressive intrusion-detection and firewall protection.

6. The Contractor agrees to and ensures its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.

B. Disposition

1. If the Contractor will maintain any Confidential Information on its systems (or its sub-contractor systems), the Contractor will maintain a documented process for securely disposing of such data upon request or contract termination; and will obtain written certification for any State of New Hampshire data destroyed by the Contractor or any subcontractors as a part of ongoing, emergency, and or disaster recovery operations. When no longer in use, electronic media containing State of New Hampshire data shall be rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion and media sanitization, or otherwise physically destroying the media (for example, degaussing) as described in NIST Special Publication 800-88, Rev 1, Guidelines for Media Sanitization, National Institute of Standards and Technology, U. S. Department of Commerce. The Contractor will document and certify in writing at time of the data destruction, and will provide written certification to the Department upon request. The written certification will include all details necessary to demonstrate data has been properly destroyed and validated. Where applicable, regulatory and professional standards for retention requirements will be jointly evaluated by the State and Contractor prior to destruction.
2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.
3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

IV. PROCEDURES FOR SECURITY

- A. Contractor agrees to safeguard the DHHS Data received under this Contract, and any derivative data or files, as follows:
  1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.
  2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

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3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store Department confidential information where applicable.
4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
5. The Contractor will provide regular security awareness and education for its End Users in support of protecting Department confidential information.
6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.
7. The Contractor will work with the Department to sign and comply with all applicable State of New Hampshire and Department system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.
8. If the Department determines the Contractor is a Business Associate pursuant to 45 CFR 160.103, the Contractor will execute a HIPAA Business Associate Agreement (BAA) with the Department and is responsible for maintaining compliance with the agreement.
9. The Contractor will work with the Department at its request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Departments discretion with agreement by the Contractor, or the Department may request the survey be completed when the scope of the engagement between the Department and the Contractor changes.
10. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.
11. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from

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the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.

12. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.
13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doit/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
14. Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify the State's Privacy Officer and the State's Security Officer of any security breach immediately, at the email addresses provided in Section VI. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.
15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.
16. The Contractor must ensure that all End Users:
  - a. comply with such safeguards as referenced in Section IV A. above; implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.
  - b. safeguard this information at all times.
  - c. ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.
  - d. send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.

*M. J. [Signature]*

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- e. limit disclosure of the Confidential Information to the extent permitted by law.
- f. Confidential Information received under this Contract and individually identifiable data derived from DHHS Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card keys, biometric identifiers, etc.).
- g. only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as required in section IV above.
- h. in all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.
- i. understand that their user credentials (user name and password) must not be shared with anyone, End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

Contractor is responsible for oversight and compliance of their End Users. DHHS reserves the right to conduct onsite inspections to monitor compliance with this Contract, including the privacy and security requirements provided in herein, HIPAA, and other applicable laws and Federal regulations until such time the Confidential Data is disposed of in accordance with this Contract.

**V. LOSS REPORTING**

The Contractor must notify the State's Privacy Officer and Security Officer of any Security Incidents and Breaches immediately, at the email addresses provided in Section VI.

The Contractor must further handle and report Incidents and Breaches involving PHI in accordance with the agency's documented Incident Handling and Breach Notification procedures and in accordance with 42 C.F.R. §§ 431.300 - 306. In addition to, and notwithstanding, Contractor's compliance with all applicable obligations and procedures, Contractor's procedures must also address how the Contractor will:

1. Identify Incidents;
2. Determine if personally identifiable information is involved in Incidents;
3. Report suspected or confirmed Incidents as required in this Exhibit or P-37;
4. Identify and convene a core response group to determine the risk level of Incidents and determine risk-based responses to Incidents; and

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5. Determine whether Breach notification is required, and, if so, identify appropriate Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

Incidents and/or Breaches that implicate PI must be addressed and reported, as applicable, in accordance with NH RSA 359-C:20..

**VI. PERSONS TO CONTACT**

**A. DHHS Privacy Officer:**

DHHSPrivacyOfficer@dhhs.nh.gov

**B. DHHS Security Officer:**

DHHSInformationSecurityOffice@dhhs.nh.gov