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

Lori A. Weaver  
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 2, 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 **Retroactive, Sole Source** amendment to an existing contract with Cepheid, Inc. (Vendor #172774), Sunnyvale, CA, to continue to provide technical support, maintenance and repairs and to add a second GeneXpert instrument for the Virology Unit to perform testing for tuberculosis and other infectious diseases, by exercising a contract renewal option by increasing the price limitation by \$75,554 from \$19,528 to \$95,082, and extending the completion date from December 31, 2022 to December 31, 2025, effective retroactive to December 31, 2022, upon Governor and Council approval. 74% Federal Funds. 26% General Funds.

The original contract was approved by Governor and Council on March 11, 2020, item #15.

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, 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.

**05-95-90-903010-79660000 HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, PUBLIC HEALTH LABORATORIES**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2020	024-500225	Maintenance Other Than Buildings and Grounds	90059000	\$3,255	\$0	\$3,255
2021	024-500225	Maintenance Other Than Buildings and Grounds	90059000	\$6,509	\$0	\$6,509

2022	024-500225	Maintenance Other Than Buildings and Grounds	90059000	\$6,509	\$0	\$6,509
2023	024-500225	Maintenance Other Than Building and Grounds	90059000	\$3,255	\$0	\$3,255
2023	102-500731	Contracts for Program Services	90059000	\$0	\$6,510	\$6,510
2024	024-500225	Maintenance Other Than Building and Grounds	90059000	\$0	\$6,510	\$6,510
2025	024-500225	Maintenance Other Than Building and Grounds	90059000	\$0	\$6,509	\$6,509
			<b>Subtotal</b>	<b>\$19,528</b>	<b>\$19,529</b>	<b>\$39,057</b>

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

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2023	024-500225	Maintenance Other Than Building and Grounds	90183520	\$0	\$18,675	\$18,675
2024	024-500225	Maintenance Other Than Building and Grounds	90183520	\$0	\$18,675	\$18,675
2025	024-500225	Maintenance Other Than Building and Grounds	90183501	\$0	\$18,675	\$18,675
			<b>Subtotal</b>	<b>\$0</b>	<b>\$56,025</b>	<b>\$56,025</b>
			<b>Total</b>	<b>\$19,528</b>	<b>\$75,554</b>	<b>\$95,082</b>

### EXPLANATION

This request is **Retroactive** because additional time was needed to negotiate and finalize the scope of the work prior to the Contractor and Department reaching mutually acceptable terms. Retroactive approval is being requested to avoid additional fees the Department could incur if preventable maintenance appointments do not occur, which would leave the Department in breach of a Clinical Laboratory Improvement Amendments (CLIA) requirement.

This request is **Sole Source** because the original contract was sole source, and MOP 150 requires that all subsequent amendments to the contract be labelled as sole source. The GeneXpert System is proprietary to Cepheid DNA Detection, and technical support, maintenance and repairs to the system must therefore be performed by Cepheid DNA Detection in order to maintain optimum functionality in accordance with manufacturer standards.

The purpose of this request is to exercise a renewal option to extend the contract for the continued use of the GeneXpert instrument operated by the Clinical Microbiology Unit for tuberculosis testing, and to add a second GeneXpert instrument operated by the Virology Unit to perform sexually transmitted disease and COVID-19 testing.

The New Hampshire Public Health Laboratories will continue to utilize the GeneXpert System to perform molecular testing of specimens in order to identify Mycobacterium tuberculosis complex. Mycobacterium tuberculosis complex is an organism that causes tuberculosis, a highly contagious and deadly disease that affects approximately two (2) million people worldwide and costs the national health care system millions of dollars in patient care and treatment. The rapid detection of Mycobacterium tuberculosis complex, and the detection of Rifampin resistance helps to guide treatment in an expedient way to mitigate the risk of widespread tuberculosis outbreaks across the State.

The GeneXpert System will continue to allow the Department to quickly identify resistance mechanisms, which are genes that make an organism resistant to antibiotics. The GeneXpert System will continue to allow the New Hampshire Public Health Laboratories the ability to rapidly diagnose pulmonary tuberculosis infection in one (1) day, rather than weeks using traditional bacterial growth methods, which dramatically limits exposure to the active tuberculosis disease. Additionally, the ability of the GeneXpert System to identify resistance mechanisms to Carbapenem drugs assists with limiting the spread of antibiotic resistant organisms within the State of New Hampshire.

The Department will monitor services by ensuring:

- All repairs occur within two (2) business days.
- An Uptime Guarantee of ninety-eight percent (98%) per quarter.
- The Contractor compensates the Department an additional week of coverage, for a maximum of one (1) week per quarter, for any time the system is down below the Uptime Guarantee, as calculated by the Department at the end of each calendar quarter.

As referenced in Exhibit C-1, Revisions to Standard Contract Language, of the original agreement, the parties have the option to extend 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 three (3) of the three (3) years available.

Should the Governor and Executive Council not authorize this request, the New Hampshire Public Health Laboratories' GeneXpert System may not operate at optimum capacity. If the devices are not operating at full capacity, New Hampshire citizens could be at risk of exposure to active Tuberculosis infection, STDs, COVID-19, and become exposed to Carbapenem resistant organisms, which would be detrimental to the well-being and health for all of New Hampshire residents.

Area served: Statewide

Source of Federal Funds: Assistance Listing Number #93.323, FAIN #NU50CK000522.

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

Respectfully submitted,



Lori A. Weaver  
Interim Commissioner



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

This Amendment to the GeneXPert Service Agreement contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Cepheid, Inc. ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on 3/11/20, (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, and Exhibit C-1 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, Contractor Name, Block 1.3, to read:  
Cepheid, Inc.
2. Form P-37, General Provisions, Block 1.6, Account Number, to read:  
05-095-090-903010-79660000  
05-95-90-903010-18350000
3. Form P-37 General Provisions, Block 1.7, Completion Date, to read:  
December 31, 2025
4. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:  
\$95,082
5. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:  
Robert W. Moore, Director.
6. Modify Exhibit A, Scope of Services, Section 1., Provisions Applicable to All Services, Subsection 1.1., to read:
  - 1.1. This Agreement covers only defects arising from normal usage of the two GeneXpert Systems (Serial Numbers 807675 and 808976) located at Public Health Laboratories, 29 Hazen Drive, Concord, NH (hereinafter sometimes referred to as the "GeneXpert Systems") and does not cover malfunctions or failures resulting from operation in an unsuitable environment, use of the system for purposes other than that for which it was designed, unauthorized attachments, acts of nature, unusual physical or electrical stress, modifications or repairs done by other than the Contractor or the Contractor's authorized service provider, or misuse, abuse, or neglect of the system.
7. Modify Exhibit A, Scope of Services, Section 2., Scope of Work, Subsection 2.1., to read:
  - 2.1. The Contractor shall provide technical support, maintenance and repairs, provided in this Agreement, inclusive of all parts, labor and return shipping costs for two GeneXpert Systems.
8. Modify Exhibit A, Scope of Services, Section 2., Scope of Work, Subsection 2.2., to read:
  - 2.2. The Contractor shall provide the Department preferential consideration for scheduling maintenance and repair of the GeneXpert Systems over service requests from customers not covered by a service agreement. Services do not include any upgrades to hardware or third party

software.

9. Modify Exhibit A, Scope of Services, Section 2., Scope of Work, Subsection 2.3., to read:

2.3. The Contractor shall have secure internet access to the GeneXpert Systems to assess the need for repair, provide calibration, and provide software updates.

10. Modify Exhibit A, Scope of Services, Section 2., Scope of Work, Subsection 2.8., to read:

2.8. The Contractor shall at its sole discretion issue a Return Material Authorization (RMA) number to the Department when GeneXpert systems or components thereof must be returned to the Contractor.

11. Modify Exhibit A, Scope of Services, Section 2., Scope of Work, Subsection 2.8., Subsection 2.8.1., to read:

2.8.1. GeneXpert Systems or components must not be returned to the Contractor without prior arrangement between the Contractor and the Department; and

12. Modify Exhibit B, Method and Conditions Precedent to Payment, Section 2., to read:

2. This Agreement is funded by:

2.1. 74% Federal funds, Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases (ELC), as awarded on May 26, 2020, by the Centers for Disease Control and Prevention (CDC), CFDA 93.323, FAIN NU50CK000522

2.2. 26% General funds.

13. Modify Exhibit B, Method and Conditions Precedent to Payment, Section 5.2, to read:

5.2. The Contractor shall submit annual invoices to the Department as follows:

5.2.1. One (1) invoice after Governor and Executive Council approval, in an amount not to exceed \$3,255, for services in State Fiscal Year 2020.

5.2.2. One (1) invoice no sooner than July 1, 2020, in an amount not to exceed \$6,509, for services in State Fiscal Year 2021.

5.2.3. One (1) invoice no sooner than July 1, 2021, in an amount not to exceed \$6,509, for services in State Fiscal Year 2022.

5.2.4. One (1) invoice no sooner than July 1, 2022, in an amount not to exceed \$28,440, for services in State Fiscal Year 2023.

5.2.5. One (1) invoice no sooner than July 1, 2023, in an amount not to exceed \$25,185, for services in State Fiscal Year 2024.

5.2.6. One (1) invoice no sooner than July 1, 2024, in an amount not to exceed \$25,184, for services in State Fiscal Year 2025.

All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be effective retroactive to December 31, 2022, 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

5/2/2023

Date

DocuSigned by:

Patricia M. Tilley

Name: Patricia M. Tilley

Title: Director

Cepheid DNA Detection

5/11/2023

Date

Name: Vy Tran

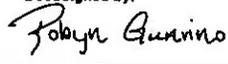
Title: Manager, Service Contract Administration

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

OFFICE OF THE ATTORNEY GENERAL

5/2/2023

Date

DocuSigned by:  
  
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:

# 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 CEPHEID is a California Profit Corporation registered to do business in New Hampshire as CEPHEID, INC. on February 19, 2020. 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: 836993

Certificate Number: 0006238804



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 30th day of May A.D. 2023.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular stamp.

David M. Scanlan  
Secretary of State

## CERTIFICATE OF AUTHORITY

I, Deidre Jarrett hereby certify that:

1. I am a duly elected Vice President, US Business Operations.
2. That Vy Tran, Manager, Services Contract Administration, by way of a Signature Authority Delegation is duly authorized on behalf of Cepheid to enter into contracts or agreements with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in her judgment be desirable or necessary to effect the purpose of the Signature Authority Delegation.
3. I hereby certify that said signature authority has not been amended or repealed and remains in full force and effect as of the date of the contract/contract amendment to which this certificate is attached. This authority remains valid for thirty (30) days from the date of this Certificate of Authority. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Dated: April 28, 2023

Deidre Jarrett

Deidre Jarrett (May 1, 2023 10:20 EDT)

Signature of Elected Officer

Name: Deidre Jarrett

Title: Vice President, US Business Operations



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/11/2023

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> MARSH USA INC. 1050 CONNECTICUT AVENUE, SUITE 700 WASHINGTON, DC 20036-5386 Attn: Danaher.certrequest@marsh.com Fax (212) 948-0503	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> <b>E-MAIL ADDRESS:</b> <b>FAX (A/C, No):</b>														
CN102997607-ALL-7/1-22-23      CEPH	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : ACE American Insurance Company</td> <td style="text-align: center;">22667</td> </tr> <tr> <td>INSURER B : Indemnity Ins Co Of North America</td> <td style="text-align: center;">43575</td> </tr> <tr> <td>INSURER C : ACE Fire Underwriters Insurance Company</td> <td style="text-align: center;">20702</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : ACE American Insurance Company	22667	INSURER B : Indemnity Ins Co Of North America	43575	INSURER C : ACE Fire Underwriters Insurance Company	20702	INSURER D :		INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															

**COVERAGES      CERTIFICATE NUMBER:      CLE-006994663-01      REVISION NUMBER: 4**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability <input checked="" type="checkbox"/> Broad Form PD GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			HDO G7248521A	07/01/2022	07/01/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			ISA H25561156	07/01/2022	07/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED      RETENTION \$						<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$
B A C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WLR C68919125 (AOS) WLR C68919083 (CA, MA, AZ) SCF C68919162 (WI)	07/01/2022 07/01/2022 07/01/2022	07/01/2023 07/01/2023 07/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b> State of NH Department of Health and Human Services 129 Pleasant Street Concord, NH 03301-3857	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <p style="text-align: right;"><i>Marsh USA Inc.</i></p>
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Lori A. Shlabinette  
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  
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www.dhhs.nh.gov

February 14, 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** agreement with Cepheid DNA Detection (Vendor #TBD), 904 Caribbean Drive, Sunnyvale, CA 94089, to provide technical support, maintenance and repairs to the GeneXpert System located at the New Hampshire Public Health Laboratories, in an amount not to exceed \$19,528, effective upon Governor and Executive Council approval, through December 31, 2022. 100% General Funds.

Funds are available in the following account for State Fiscal Years 2020 and 2021, and are anticipated to be available in State Fiscal Years 2022 and 2023.

05-95-90-903010-79660000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, PUBLIC HEALTH LABORATORIES

State Fiscal Year	Class/Account	Class Title	Job Number	Amount
2020	024-500225	Maintenance Other Than Buildings and Grounds	90059000	\$3,255
2021	024-500225	Maintenance Other Than Buildings and Grounds	90059000	\$6,509
2022	024-500225	Maintenance Other Than Buildings and Grounds	90059000	\$6,509
2023	024-500225	Maintenance Other Than Buildings and Grounds	90059000	\$3,255
			<b>Total</b>	<b>\$19,528</b>

**EXPLANATION**

This request is **sole source** because the GeneXpert System is proprietary to Cepheid DNA Detection. Therefore, the technical support, maintenance and repairs to the system must be performed by Cepheid DNA Detection in order to maintain optimum functionality in accordance with manufacturer standards.

The purpose of this request is for the Department to ensure the GeneXpert System located at the New Hampshire Public Health Laboratories maintains optimum performance. Cepheid DNA Detection provides technical support, maintenance and repairs for the GeneXpert System, which includes all parts, labor and return shipping costs, as applicable. In addition, the Contractor provides annual on-site preventative maintenance and telephone technical support through its Technical Support Call Center.

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

The New Hampshire Public Health Laboratories utilize the GeneXpert System to perform molecular testing of specimens in order to identify Mycobacterium Tuberculosis Complex. Mycobacterium Tuberculosis Complex is an organism that causes Tuberculosis, a highly contagious deadly disease of approximately two (2) million people worldwide and costs the national health care system millions of dollars in patient care and treatment.

The GeneXpert System allows the Department to quickly identify resistance mechanisms, which are genes that make an organism resistant to Carbapenem. Carbapenem is a broad-spectrum antibiotic used to treat complicated infections. This testing allows the New Hampshire Bureau of Infectious Disease Control, as well as New Hampshire providers, the ability to monitor and treat infected individuals.

The Centers for Disease Control and Prevention provides states with federal funds to assist with combatting Mycobacterium Tuberculosis Complex and to identify organisms with Carbapenem resistance. Carbapenem drug resistance among members of the Enterobacteriaceae family and other organisms is a large concern to area hospitals and communities. In order to secure grant funds, the New Hampshire Public Health Laboratories must comply with the Centers for Disease Control and Prevention's processing times for the molecular identification of Tuberculosis. The GeneXpert System enables the Department to comply with federal regulations.

The GeneXpert System allows the New Hampshire Public Health Laboratories the ability to rapidly diagnose a Tuberculosis infection in one (1) day, rather than weeks using traditional bacterial growth methods, which dramatically limits exposure to the active Tuberculosis disease. Additionally, the ability of the GeneXpert System to identify resistance mechanisms to Carbapenem drugs assists with limiting the spread of antibiotic resistants within the State of New Hampshire.

The Department will monitor the effectiveness and delivery of services required within the agreement using the following performance measures:

- The Contractor ensures an Uptime Guarantee of ninety-eight percent (98%) per quarter.
- The Contractor compensates the Department an additional week of coverage, for a maximum of one (1) week per quarter, for any time the system is down below the Uptime Guarantee, as calculated by the Department at the end of each calendar quarter.

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

Should the Governor and Executive Council not authorize this request, the New Hampshire Public Health Laboratories' GeneXpert System may not operate at optimum capacity. This would result in the Department having to rely on traditional bacterial growth methods to identify Tuberculosis, which can take two (2) to three (3) weeks. New Hampshire citizens could be at risk of exposure to active Tuberculosis for weeks before the infection is identified.

Area served: Statewide

Source of Funds: 100% General Funds

Respectfully submitted,



Lori A. Shibinette  
Commissioner

Subject: GeneXpert Service Agreement (SS-2019-DPHS-16-GENEX-01)

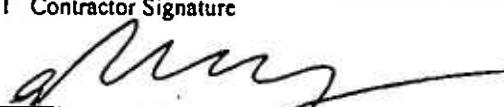
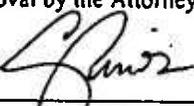
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**I. 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 Cepheid DNA Detection		1.4 Contractor Address 904 Caribbean Dr. Sunnyvale, CA 94089	
1.5 Contractor Phone Number 888-838-3222	1.6 Account Number 05-095-090-903010-79660000	1.7 Completion Date 12/31/2022	1.8 Price Limitation \$19,528
1.9 Contracting Officer for State Agency Nathan D. White, Director Bureau of Contracts and Procurement		1.10 State Agency Telephone Number 603-271-9631	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Alex Rodriguez Service Contract Inside Sales	
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] <span style="float: right;"><i>See attached California All-Purpose Acknowledgment Certificate</i></span>			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory LISA MORRIS, DIRECTOR DPHS	
Date: 2/18/20			
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, Attorney On: 2/24/20			
1.18 Approval by the Governor and Executive Council (if applicable)  By: _____ On: _____			

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Santa Clara )

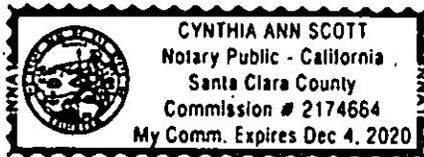
On November 22, 2019 before me, Cynthia Ann Scott, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Alexander Rodriguez  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Cynthia A Scott  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: GenXpat Service Agreement (SS-2019-DPHS-16-GENEX-01)  
Document Date: November 22, 2019 Number of Pages: 25  
Signer(s) Other Than Named Above: NONE

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Alexander Rodriguez  
 Corporate Officer - Title(s): \_\_\_\_\_  
 Partner -  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: Cepheid

Signer's Name: \_\_\_\_\_  
 Corporate Officer - Title(s): \_\_\_\_\_  
 Partner -  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**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  
GeneXpert Service Agreement



Exhibit A

**Scope of Services**

**1. Provisions Applicable to All Services**

- 1.1. This Agreement covers only defects arising from normal usage of the GeneXpert System (Serial Number 807675) located at Public Health Laboratories, 29 Hazen Drive, Concord, NH (hereinafter sometimes referred to as the "GeneXpert System") and does not cover malfunctions or failures resulting from operation in an unsuitable environment, use of the system for purposes other than that for which it was designed, unauthorized attachments, acts of nature, unusual physical or electrical stress, modifications or repairs done by other than the Contractor or the Contractor's authorized service provider, or misuse, abuse, or neglect of the system.

**2. Scope of Work**

- 2.1. The Contractor shall provide technical support, maintenance and repairs, provided in this Agreement, inclusive of all parts, labor and return shipping costs for the GeneXpert System.
- 2.2. The Contractor shall provide the Department preferential consideration for scheduling maintenance and repair of the GeneXpert System over service requests from customers not covered by a service agreement. Services do not include any upgrades to hardware or third party software.
- 2.3. The Contractor shall have secure internet access to the GeneXpert System to assess the need for repair, provide calibration and provide software updates.
- 2.4. The Contractor shall provide annual on-site Preventative Maintenance by a trained Field Service Engineer (FSE). Preventative Maintenance shall include:
  - 2.4.1. Replacement of worn module ejectors;
  - 2.4.2. Lubrication of moving parts;
  - 2.4.3. Replacement of fan filters;
  - 2.4.4. Brush cleaning module optics;
  - 2.4.5. Replacement of automation batteries as needed;
  - 2.4.6. Xpert Check.
- 2.5. The Contractor shall ensure all system repairs under this Agreement be performed by the Contractor or a third-party service provider approved by the Contractor.
- 2.6. The Contractor shall have sole discretion determining if and whether parts be repaired or replaced with new or reconditioned parts from an Authorized Cepheid Service Center.

New Hampshire Department of Health and Human Services  
GeneXpert Service Agreement



Exhibit A

- 2.6.1. Should Contractor replace any parts, the parts replaced may become the property of the Contractor at the Contractor's discretion.
- 2.6.2. Routine parts replacement includes any device associated with the system, except for parts provided in calibration kits or consumable items such as printer cartridges or other supplies identified in the Operator's Manual.
- 2.7. The Contractor at its sole discretion shall determine what repairs be performed on the system.
- 2.8. The Contractor shall at its sole discretion issue a Return Material Authorization (RMA) number to the Department when GeneXpert system or components thereof must be returned to the Contractor.
  - 2.8.1. GeneXpert System or components must not be returned to the Contractor without prior arrangement between the Contractor and the Department; and
  - 2.8.2. The RMA number must be obtained prior to shipping any item to the Contractor.
- 2.9. Prior to the arrival of a Contractor Service Representative or shipment of a system or component by the Department to the Cepheid Service Center, the system and components will undergo inspection by Department staff to ensure safe handling according to the Contractor's procedures described in the applicable Operator's Manual included with the system. The Contractor will be notified of any known hazards.
  - 2.9.1. Shipments to the Contractor's Service Center must include a completed "Clearance Certificate" that lists all potential biohazards that have been analyzed on the system or to which the system has been exposed.
- 2.10. The Contractor at its sole discretion shall provide written authorization to the Department prior to the Department attempting to repair or remove parts.
- 2.11. The Contractor shall provide telephone technical support through its Technical Support Call Center. Technical Support shall include:
  - 2.11.1. Technical Support personnel available twenty-four (24) hours a day, seven (7) days a week by calling 1-888-838-3222, except during Holiday coverage; and
  - 2.11.2. Holiday coverage from 10:00 am to 6:00 pm EST for January 1st, the 4th Thursday in November and December 25th.
- 2.12. The Contractor shall use reasonable efforts to schedule on-site service visits to occur within two (2) business days from the time Technical Support determines a need for on-site service.
- 2.13. The Contractor shall be available for onsite coverage five (5) days per week, ten (10) hours per day, between 8:00 am and 6:00 p.m. local time. Service visits exclude holidays recognized by the Contractor and provided in accordance with Section 4.1 of this Agreement.

New Hampshire Department of Health and Human Services  
GeneXpert Service Agreement



Exhibit A

- 2.14. The Contractor warrants all repair work shall be performed in accordance with industry standards for the greater of ninety (90) days or for the duration of this Agreement.
- 2.15. The Contractor warrants all replacement parts are free from defects in workmanship.
- 2.16. Other than those identified in Section 2.17 of this Agreement, the Contractor disclaims all warranties expressed or implied including the implied warranties of merchantability and fitness for a particular purpose.
- 2.17. Except in the event of Contractor's gross negligence or willful misconduct, the Contractor shall not be liable for any incidental or consequential damages, including lost profits for breach of any of its obligations under this Agreement, including breach of warranty.

### 3. Performance Measures

- 3.1. The Contractor shall ensure an Uptime Guarantee of ninety-eight percent (98%) per quarter.
  - 3.1.1. Uptime shall be determined using the following formula:  $((T-TNF) \times 100)/T$ , where:
    - 3.1.1.1. T is the total number of hours the system is typically used per quarter;
      - 3.1.1.1.1. Determined by multiplying the number of hours per day the system is typically used by thirteen (13) weeks in a quarter);
    - 3.1.1.2. TNF is the number of hours the system was unable to run tests during time T;
    - 3.1.1.3. The system will be considered down while unable to run tests; and
    - 3.1.1.4. The system will not be considered down during scheduled events, including but not limited to preventative maintenance. The time during said scheduled events will not be included in the calculation of TNF.
  - 3.2. The Contractor shall compensate the Department an additional week of coverage, for a maximum of one (1) week per calendar quarter, for any time the system is down below the Uptime Guarantee, as calculated by the Department at the end of each calendar quarter.

### 4. Deliverables

- 4.1. The Contractor shall provide a list of recognized holidays when service visits shall not occur to the Department within thirty (30) days of the contract effective date. The Contractor shall provide any updates to such list to the Department upon request.
- 4.2. The Contractor shall provide annual on-site Preventative Maintenance in accordance with Subsection 2.4 approximately every twelve (12) months after expiration of the initial warranty on the GeneXpert System.



**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.
2. This Agreement is funded by 100% General Funds.
3. 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 Contractor's current and/or future funding.
4. The Contractor shall pay all necessary shipping costs for parts and materials pursuant to Exhibit A Scope of Services which may include, but is not limited to:
  - 4.1 Replacement parts.
  - 4.2 Equipment.
5. Payment for services shall be made as follows:
  - 5.1. The Contractor shall submit one (1) invoice to the Department upon contract approval by the Governor and Executive Council (contract effective date), in an amount not to exceed \$3,255 for services in State Fiscal Year 2020.
  - 5.2. The Contractor shall submit annual invoices to the Department as follows:
    - 5.2.1. One (1) invoice no sooner than July 1, 2020, in an amount not to exceed \$6,509, for services in State Fiscal Year 2021.
    - 5.2.2. One (1) invoice no sooner than July 1, 2021, in an amount not to exceed \$6,509, for services in State Fiscal Year 2022.
    - 5.2.3. One (1) invoice no sooner than July 1, 2022, in an amount not to exceed \$3,255, for services in State Fiscal Year 2023.
  - 5.3. The State shall make payment to the Contractor within thirty (30) days of receipt of each accurate and complete invoice if sufficient funds are available. The Contractor shall keep detailed records of their activities related to DHHS-funded programs and services.
  - 5.4. Invoices must be mailed to:

Financial Administrator  
Department of Health and Human Services  
Public Health Laboratories  
29 Hazen Drive  
Concord, NH 03301
6. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this Contract may be withheld, in whole or in part, in the event of noncompliance with any State or Federal law, rule or regulation applicable to the services provided, or if the said services have not been completed in accordance with the terms and conditions of this Agreement, in which case the Department shall promptly notify the Contractor in writing.
7. 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.

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11.22.19

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 AR

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.

Exhibit C - Special Provisions

Contractor Initials

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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 (EEOP):** The Contractor will provide an Equal Employment Opportunity Plan (EEOP) 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

Exhibit C – Special Provisions

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more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP 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 EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. EEOP 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

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New Hampshire Department of Health and Human Services  
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- 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.

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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 or the Contractor may terminate this Agreement upon prior written notice to the other party. 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. Amend Section 8, Event of Default/Remedies by deleting Paragraphs 8.2.2 and 8.2.3 in their entirety.

1.3. Section 9, Data/Access/Confidentiality/Preservation, Paragraph 9.2, is amended to read:

9.2 All data and any property 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 the Agreement for any reason.

1.4. 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, thirty (30) days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.

1.5. Section 12, Assignment/Delegations/Subcontracts is amended to read:

Neither party shall assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the other party. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

1.6. Section 13, Indemnification is amended to read:

The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses, claims, liabilities or penalties asserted against the State, its officers and employees by or on behalf of any third party, to the extent resulting from, arising out of (or which may be claimed to arise out of) the negligent or willful 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. The covenant in paragraph 13 shall survive the termination of this Agreement.

1.7. Section 17, Notice is amended by adding the following language:

Notices provided to the Contractor shall be addressed to the Contractor's Legal Department.

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



2. Revisions to Standard Exhibits

2.1. Exhibit C, Special Provisions

2.1.1. Delete and replace "Contractors Obligations" introduction paragraph with the following:

Contractors Obligations: If the Contractor provides the services to eligible individuals: (a) 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 (b) In the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

2.1.2. Delete Section 1. Compliance with Federal and State Laws in its entirety.

2.1.3. Delete Section 2. Time and Manner of Determination in its entirety.

2.1.4. Delete Section 3. Documentation in its entirety.

2.1.5. Delete Section 4. Fair Hearings in its entirety.

2.1.6. Delete and replace Section 8. Maintenance of Records with the following:

8. **Maintenance of Records:** 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 reasonably acceptable to the Department, and to include, without limitation, all ledgers, books, records, and 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 reasonably required by the Department.

2.1.7. Delete and replace Section 9. Audit with the following:

9. **Audit:** If the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" is applicable to Contractor, 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.

2.1.8. Delete and replace Section 10. Confidentiality of Records with the following:

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. Additionally, the

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



Contractor may disclose any of the foregoing information, reports, or records if it is compelled to do so by law, provided the Contractor takes reasonable actions to avoid and minimize the extent of such disclosure and gives the State prior written notice as far in advance of the date of such disclosure as possible (to the extent legally permitted).

2.1.9. Delete Section 11. Reports in its entirety.

2.1.10. Delete and replace Section 12. Completion of Services with the following:

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.

2.1.11. Delete and replace Section 13. Credits with the following:

13. **Credits:** No public documents, notices, press releases, research reports and other similar materials prepared during or resulting from the performance of the services of the Contract shall be published without the prior written consent of the other party.

2.1.12. Delete and replace Section 14. Prior Approval and Copyright Ownership with the following:

14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased pursuant to 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 pursuant to the contract, 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.

2.1.13. Delete Section 15. Operation of Facilities in its entirety.

2.1.14. Delete and replace the first paragraph in Section 19. Subcontractors with the following:

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 any of the services for the State, 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.

2.2. Exhibit F. Certification Regarding Debarment, Suspension and Other Responsibility Matters

2.2.1. Delete and replace Section 11. Primary Covered Transactions with the following:

11. PRIMARY COVERED TRANSACTIONS

11.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; and

11.2 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 (l)(b) of this certification.

Exhibit C-1 – Revisions/Exceptions to Standard Contract Language Contractor Initials

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



**3. Renewal**

3.1. 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.

New Hampshire Department of Health and Human Services  
Exhibit D



**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The Contractor 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

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.

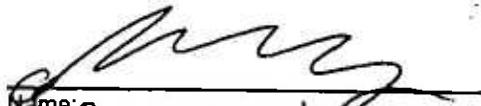
2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

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.

Contractor Name:

11.22.19  
Date

  
Name: \_\_\_\_\_  
Title: Service Contract Inside Sales

New Hampshire Department of Health and Human Services  
Exhibit E



**CERTIFICATION REGARDING LOBBYING**

The Contractor 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

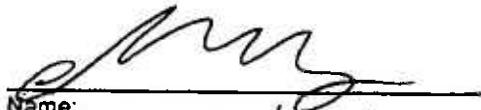
The undersigned certifies, to the best of his or her knowledge and belief, that:

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.

Contractor Name:

11.22.19  
Date

  
Name:  
Title: Service Contract Ins. Ac Sales

New Hampshire Department of Health and Human Services  
Exhibit F



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

The Contractor 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

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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 (l)(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 76, 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.

Contractor Name:

11.22.19  
Date

[Signature]  
Name:  
Title: Service Contract Inside Subor

Contractor Initials DR  
Date 11.22.19

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 Contractor 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:

Contractor 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 – OJJDP 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

Contractor Initials

*AK*

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 Contractor 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 Contractor agrees to comply with the provisions indicated above.

Contractor Name:

11.22.19  
Date

  
Name: \_\_\_\_\_  
Title: Service Contract Inside Sales

Exhibit G

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

Contractor Initials NR

New Hampshire Department of Health and Human Services  
Exhibit H



**CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**

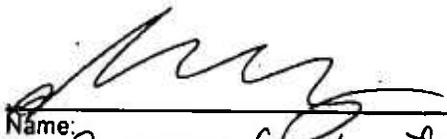
Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, 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 Contractor 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 Contractor 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.

Contractor Name:

11.22.19  
Date

  
Name: \_\_\_\_\_  
Title: Service Contract Inside S/S

Contractor Initials AR  
Date 11.22.19