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

Lori A. Shibinette  
Commissioner

Lisa M. Morris  
Director

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

July 13, 2020

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

**INFORMATIONAL ITEM**

**Item #1:** Pursuant to RSA 4:45, RSA 21-P:43, and Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, and 2020-14, Governor Sununu authorized the Department of Health and Human Services, Division of Public Health Services, to enter into a **Retroactive, Sole Source** agreement with Quest Diagnostics, LLC (VC#TBD), Marlborough, MA in the amount of \$700,000 for COVID-19 specimen testing, with the option to renew for up to two (2) additional years, effective retroactive April 29, 2020, through December 31, 2020, upon Governor approval. 100% Federal Funds.

**Item #2:** Pursuant to RSA 4:45, RSA 21-P:43, and Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, and 2020-14, Governor Sununu authorized the Department of Health and Human Services, Division of Public Health Services, to enter into a **Sole Source** amendment to the existing contract with Quest Diagnostics, LLC (VC#TBD), Marlborough, MA for COVID-19 specimen testing, by increasing the price limitation by \$300,000 from \$700,000 to \$1,000,000, with no change to the contract completion date of December 31, 2020, effective upon Governor approval. 100% Federal Funds.

Funds are available in the following account for State Fiscal Years 2020 and 2021, 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.

**05-95-90-903010-19010000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT OF, HHS: DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES,  
ELC CARES COVID-19**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2020	103-502664	Contracts for Oper Svc	95010999	\$700,000
2021	103-502664	Contracts for Oper Svc	95010999	\$300,000
			<b>Total</b>	<b>\$1,000,000</b>

**EXPLANATION**

**Item #1:** This item is **Retroactive** because the Department needed to immediately begin providing COVID-19 specimen retrieval from the State's seven (7) fixed Regional Testing Centers

to complete specimen testing. This item is **Sole Source** because the Department determined the Contractor was able and willing to immediately begin the enhanced testing necessary for the State's strategic response to the COVID-19. The Contractor is responsible for picking up specimens for COVID-19 testing daily at each of the Regional Testing Centers. If the number of Regional Testing Centers increases, the Contractor will service up to twelve (12) Centers. The specimens are processed at the Contractor's laboratory. Once the tests have been completed, the Contractor notifies the Department, the patient, and their healthcare provider of the results. The Contractor handles all of the insurance billing, and if the individual does not have insurance or is underinsured, the State pays the Contractor \$100.00 per test.

Item #2: The amendment action is **Sole Source** because MOP 150 requires: (1) any subsequent amendment to a sole source contract be labeled as a sole source request; and (2) any amendment increasing the original price limitation by more than 10 percent of the original contract amount be identified as sole source. The purpose of this amendment is to increase the price limitation to allow the Department to pay for additional testing needs not explicitly contemplated in the original price limitation.

Approximately seven hundred and fifty (750) samples will be collected each day from April 29, 2020, to December 31, 2020.

The Department will monitor contracted services by ensuring there is a <5% failure rate in the testing results.

As referenced in the Agreement, the parties have the option to extend the Agreement for up two (2) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and required governmental approval.

Area served: Statewide

Source of Funds: CFDA #93.323, FAIN #NU50CK000522

Respectfully submitted,



*LS*  
Lori A. Shibinette  
Commissioner



**New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing**

**State of New Hampshire  
Department of Health and Human Services  
Amendment #1 to the COVID-19 Sample Testing Contract**

This 1<sup>st</sup> Amendment to the COVID-19 Sample Testing contract (hereinafter referred to as "Amendment #1") is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and Quest Diagnostics, LLC, (hereinafter referred to as "the Contractor"), a Massachusetts Limited Liability Company with a place of business at 200 Forest Street, Marlborough, MA 01752.

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 17, the Contract may be amended upon written agreement of the parties and appropriate State approval; 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 the Contract as follows:

1. Modify Form P-37, General Provisions, Block 1.8, Price Limitation, to read:  
\$1,000,000.
2. Modify Exhibit A, Revisions to Standard Contract Provisions, Paragraph 1.9, to read:  
Subparagraph 14.1.2, Paragraph 14, Insurance, is deleted in its entirety and replaced with the following:  
14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate or excess; and  
14.1.2. professional liability insurance in the amount of at least \$5 million per claim and \$5 million annual aggregate. Automobile Liability insurance in the amount of \$3 million per claim. Worker's Compensation as required by statute.

All terms and conditions of the Contract not inconsistent with this Amendment #1 remain in full force and effect. This amendment shall be effective upon the Governor's approval issued under the Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, and 2020-10.



New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing

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

6/15/2020  
Date

Ann H. Lacey  
Name: Ann H. Lacey  
Title: Associate Commissioner

Quest Diagnostics, LLC

6/15/2020 | 4:55 PM EDT  
Date

DocuSigned by:  
Karthik Kuppusamy, PhD  
Name:  
Title:



**New Hampshire Department of Health and Human Services  
COVID-19 Sample Testing**

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

OFFICE OF THE ATTORNEY GENERAL

06/19/20

Date

*Catherine Pinos*

Name:

Title: Catherine Pinos, Attorney

I hereby certify that the foregoing Amendment was approved by the Governor approval issued under Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09 and 2020-10.

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:

Subject: SS-2020-DPHS-COVID-18-01

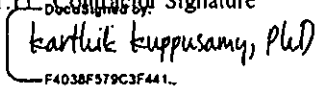
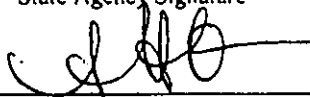
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**I. IDENTIFICATION.**

1.1 State Agency Name New Hampshire Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-3857	
1.3 Contractor Name Quest Diagnostics, LLC		1.4 Contractor Address 200 Forest Street, Marlborough, MA 01752	
1.5 Contractor Phone Number (774) 369-3900	1.6 Account Number 05-95-95-950010- 56760000-103/502664 95010999	1.7 Completion Date December 31, 2020	1.8 Price Limitation \$700,000
1.9 Contracting Officer for State Agency Nathan D. White, Director		1.10 State Agency Telephone Number (603) 271-9631	
1.11 Contractor Signature  Date: 6/4/2020 19:19 AM EDT		1.12 Name and Title of Contractor Signatory Karthik Kuppusamy, PhD Vice President & General Manager	
1.13 State Agency Signature  Date: 6/4/2020		1.14 Name and Title of State Agency Signatory Ann Landry / Assoc. Comm	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Catherine Pinos</u> On: <u>06/19/20</u>			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

**2. 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 B 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 1.17, 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 1.13 ("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 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 for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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. The Contractor 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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 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.

10.2 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.

10.3 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.

**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.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omissions of the

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Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**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. The 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. 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.

**17. 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.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

New Hampshire Department of Health and Human Services  
SS-2020-DPHS-COVID-18-01



EXHIBIT A

**REVISIONS TO STANDARD CONTRACT PROVISIONS**

**1. Revisions to Form P-37, General Provisions**

1.1. Paragraph 3, Effective Date/Completion of Services, is amended at Subparagraph 3.1 as follows:

3.1. Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor of the State of New Hampshire as indicated in block 1.17, this Agreement, and all obligations of the parties hereunder, shall become effective on April 29, 2020 ("Effective Date").

1.2. Paragraph 3, Effective Date/Completion of Services, is amended by adding Subparagraph 3.3 as follows:

3.3. The parties may extend the Agreement for up to two (2) additional years from the Completion Date, contingent upon reasonably satisfactory delivery of services, available funding, agreement of the parties, and required governmental approval.

1.3. Paragraph 4, Conditional Nature of Agreement, is amended as follows:

4. 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 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 for Services provided in EXHIBIT B, in whole or in part. 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, pursuant to the terms of this Agreement, each and both parties shall have the right to reduce or terminate the Services under this Agreement immediately upon giving written notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

1.4. Paragraph 8, Event of Default/Remedies, is amended at Subparagraphs 8.1.1 and 8.1.2 as follows:

8.1.1. failure to perform the Services in a reasonably satisfactory manner;

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

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New Hampshire Department of Health and Human Services  
SS-2020-DPHS-COVID-18-01



**EXHIBIT A**

- 1.5. Subparagraphs 8.2.3, Paragraph 8, Event of Default/Remedies, is deleted in its entirety.
- 1.6. Paragraph 9, Termination, is amended at Subparagraph 9.1 as follows:
  - 9.1. Notwithstanding paragraph 8, either party may terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the non-terminating party that the terminating party is exercising its option to terminate the Agreement.
- 1.7. Paragraph 12, Assignment/Delegation/Subcontracts, is deleted in its entirety and replaced with the following:
  - 12.1. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State.
  - 12.2. None of the Services, except for courier and other non-testing related services, shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements upon reasonable written request and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.
  - 12.3. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions. The Contractor shall have written agreements with all subcontractors, specifying the work to be performed and how corrective action shall be managed if the subcontractor's performance is inadequate. The Contractor shall manage the subcontractor's performance on an ongoing basis and take corrective action as the Contractor deems necessary in its sole and absolute discretion.
- 1.8. Paragraph 13, Indemnification, is amended as follows:
  13. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the negligent, reckless or intentional acts, omissions, or conduct of the Contractor, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under

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New Hampshire Department of Health and Human Services  
SS-2020-DPHS-COVID-18-01



**EXHIBIT A**

this paragraph 13. 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.

1.9. Subparagraph 14.1.2, Paragraph 14, Insurance, is deleted in its entirety and replaced with the following:

14.1.2. and Professional Liability insurance in the amount of at least \$1 million per claim and \$3 million annual aggregate. Automobile Liability Insurance in the amount of \$1 million per claim. Worker's Compensation as required by statute.

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New Hampshire Department of Health and Human Services  
COVID-19 Testing



EXHIBIT B

Scope of Services

1. Statement of Work

1.1. For the purposes of this Agreement, all references to days shall mean calendar days.

1.2. Quest Laboratories shall be responsible for picking up specimens for COVID-19 testing daily at each of up to twelve fixed Regional Testing Centers locations at a time agreed upon by the Department and Quest for each location.

1.2.1. Regional Testing Centers include the following seven locations and may be expanded to include up to five additional locations as requested by the Department and agreed upon by Quest without re-execution of this Agreement:

- 1.2.1.1.1. 532 Main Street, Lancaster, NH 03584
- 1.2.1.1.2. 7 Armory Road, Plymouth, NH 03264
- 1.2.1.1.3. 1864 White Mountain Hwy, Tamworth NH 03886
- 1.2.1.1.4. 107 South Street, Claremont, NH 03743
- 1.2.1.1.5. 106 Brock Street, Rochester, NH 03867
- 1.2.1.1.6. 154 Osgood Road, Milford, NH 03055
- 1.2.1.1.7. 28 Stickney Avenue, Concord, NH 03301

1.2.2. If the location of a Regional Testing Center changes after this Agreement is executed, this Agreement does not need to be re-executed. The new location shall take the place of the previous location and all duties required by the Parties shall extend to the new location.

1.2.3. Services shall be provided Monday through Sunday.

1.3. Quest's courier shall deliver the specimens to their laboratory for testing. State shall transport specimens from State facility in Lancaster, NH to a mutually agreed upon site.

1.3.1. Total samples projected for delivery is 750/day.

1.4. Subject to the terms of this agreement and applicable law, all results shall be provided to the Division of Public Health Services, the patients' health care provider as listed specified on the registration forms, and made available to patients upon request.

1.4.1. The results shall be provided in a reasonable amount of time.

1.5. Quest shall bill the patients' applicable insurance or health plan directly. If a patient is uninsured or underinsured, Quest shall bill the State of New Hampshire, and the State of New Hampshire shall pay for the uninsured or underinsured patient at a rate of \$100.00 per test.

KEP

New Hampshire Department of Health and Human Services  
COVID-19 Testing



**EXHIBIT B**

**2. Performance Measures**

- 2.1. The Department will monitor Contractor performance by ensuring there is <5% failure rate in the testing results.

**3. Confidentiality**

- 3.1. Any and all confidential information obtained or received by the State or Contractor shall be kept confidential and shall not be disclosed to anyone for any reason, unless required by law. "Confidential Information" means all information owned, managed, created, or received from the Individuals, the Department, any other agency of the State, or any medical provider, that is protected by Federal or State information security, privacy or confidentiality laws or rules. Confidential Information includes, but is not limited to, Derivative Data, protected health information (PHI), personally identifiable information (PII), federal tax information (FTI), Social Security Administration information (SSA) and criminal justice information services (CJIS) and any other sensitive confidential information provided under the Agreement. This covenant shall survive the termination of the Agreement.
- 3.2. The State and Contractor shall comply with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**4. Additional Terms**

**4.1. Impacts Resulting from Court Orders or Legislative Changes**

- 4.1.1. The Contractor agrees that, to the extent future state or federal legislation or court orders may have an impact on the Services described herein, the State has the right to modify Service priorities and expenditure requirements under this Agreement so as to achieve compliance therewith.

**5. Records**

- 5.1. The Contractor shall keep records that include, but are not limited to:
  - 5.1.1. Records reflecting all income received or collected by the Contractor under this Agreement.
- 5.2. 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. 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

New Hampshire Department of Health and Human Services  
COVID-19 Testing



EXHIBIT B

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.

New Hampshire Department of Health and Human Services



EXHIBIT C

Payment Terms

- 1. For the purposes of this Agreement:
  - 1.1. The Department has identified the Contractor as a Contractor, in accordance with 2 CFR 200.0. et seq.
- 2. Payment for services shall be made in accordance with paragraph 1.5 of Exhibit B, Scope of Services. The Contractor may only bill the Department for services provided once it has determined that no other form of reimbursement is available for uninsured/underinsured individuals.
- 3. For services provided to individuals that are not billable to other insurance or payors, or Medicaid, payment shall be on a cost reimbursement basis for actual expenditures incurred in the fulfillment of this Agreement, as specified below:

Rate Per Test	\$100.00
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- 4. The Contractor shall submit an invoice in a form satisfactory to the State by the fifteenth (15th) working day of the following month, which identifies and requests reimbursement for the number of tests performed in the prior month. The Contractor shall ensure the invoice is completed, dated and returned to the Department in order to initiate payment.
- 5. In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to [DPHScontractbilling@dhhs.nh.gov](mailto:DPHScontractbilling@dhhs.nh.gov), or invoices may be mailed to:
  - Financial Manager
  - Department of Health and Human Services
  - Division of Public Health Services
  - Attn: Public Health Laboratories
  - 29 Hazen Drive
  - Concord, NH 03301
- 6. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available, subject to Paragraph 4 of the General Provisions Form Number P-37 of this Agreement.
- 7. The final invoice shall be due to the State no later than forty (40) days after the contract completion date specified in Form P-37, General Provisions Block 1.7 Completion Date.
- 8. The Contractor must provide the services in Exhibit B, Scope of Services, in compliance with funding requirements.

Quest Diagnostics, LLC

Exhibit C

Contractor Initials

<sup>DS</sup>  
kkl

SS-2020-DPHS-18-COVIDU-01

Page 1 of 3

Date 6/4/2020 | 9:19 AM EDT



New Hampshire Department of Health and Human Services



EXHIBIT C

9. The Contractor agrees that funding under this Agreement may be withheld, in whole or in part in the event of non-compliance with the terms and conditions of Exhibit B, Scope of Services.

10. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this agreement may be withheld, in whole or in part, in the event of non-compliance with any federal or state law, rule or regulation applicable to the services provided, or if the said services or products have not been satisfactorily completed in accordance with the terms and conditions of this agreement.

11. Notwithstanding Paragraph 18 of the General Provisions Form P-37, changes limited to adjusting amounts within the price limitation and adjusting encumbrances between State Fiscal Years through the Budget Office may be made by written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.

12. Audits

12.1. The Contractor is required to submit an annual audit to the Department if any of the following conditions exist:

12.1.1. Condition A - The Contractor expended \$750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.

12.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of \$1,000,000 or more.

12.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.

12.2. If Condition A exists, the Contractor shall submit an annual single audit performed by an independent Certified Public Accountant (CPA) to the Department within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

12.3 If Condition B or Condition C exists, the Contractor shall submit an annual financial audit performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.

12.4 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

Handwritten initials: kkp

New Hampshire Department of Health and Human Services



EXHIBIT C

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has been taken, or which have been disallowed because of such an exception.

# State of New Hampshire

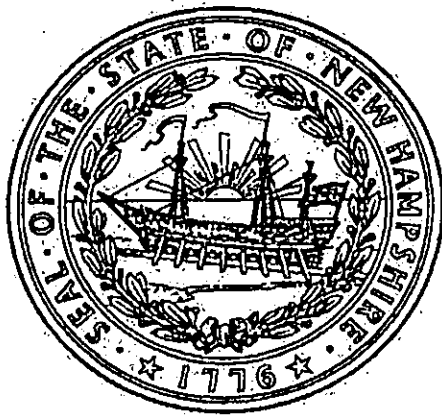
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that QUEST DIAGNOSTICS LLC is a Massachusetts Limited Liability Company registered to transact business in New Hampshire on May 06, 2003. 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: 432879

Certificate Number: 0004902957



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 29th day of April A.D. 2020.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

CERTIFICATE OF AUTHORITY

I, William J. O'Shaughnessy, Jr., hereby certify that:  
(Name of the elected Officer of the Corporation/LLC; cannot be contract signatory)

- 1. I am a duly elected Secretary of Quest Diagnostics LLC, a Massachusetts limited liability company.  
(Corporation/LLC Name)
- 2. That attached hereto as Annex A is a true copy of the resolutions adopted by written consent of the Board of Directors on October 16, 2018, which resolutions are in full force and effect as of the date hereof.  
(Date)


That Karthikeyan Kuppusamy, Ph.D., Vice President and General Manager of Quest Diagnostics Incorporated  
(may list more than one person)  
(Name and Title of Contract Signatory)

is duly authorized on behalf of Quest Diagnostics LLC, a Massachusetts limited liability company to enter into contracts or agreements with the State  
(Name of Corporation/ LLC)

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 his/her judgment be desirable or necessary to effect the purpose of the resolutions.

3. I hereby certify that said resolutions have not been amended or repealed and remain 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: 6/3/2020

DocuSigned by:  
  
C31233191E2148D  
 Signature of Elected Officer  
 Name: William J. O'Shaughnessy, Jr.  
 Title: Secretary

Annex A

**Confer Authority to Execute and Deliver Documents and Agreements**

**RESOLVED**, that:

- (i) each Executive Vice President, each Senior Vice President and each Vice President of Quest Diagnostics Incorporated (Delaware) (the "Parent"), and
- (ii) each person elected Executive Vice President, Senior Vice President or Vice President of the Parent after the date hereof, and
- (iii) each person who may be authorized, now or hereafter, by the Chief Executive Officer of Parent, to sign documents and agreements on behalf of the Parent

shall have and possess the authority to execute and deliver documents and agreements on behalf of the Company, to the same extent, and using the same title that the person holds in the Parent, as if the person were an officer of the Company; and

**FURTHER RESOLVED**, that the authority conferred hereby shall remain in effect until such time that the person having authority conferred hereby ceases to be an officer of the Parent, ceases to be authorized by the Chief Executive Officer to sign documents and agreements on behalf of Parent, or is no longer employed by the Parent or any subsidiary thereof. When the person ceases to be an officer of the Parent, ceases to be authorized by the Chief Executive Officer to sign documents and agreements on behalf of Parent, or is no longer employed by the Parent or any subsidiary thereof, the authority conferred hereby shall pass to the person's successor in office and no new resolution conferring authority shall be required to confer authority upon that successor.

**FURTHER RESOLVED**, that any all actions taken by any of the authorized persons regarding the foregoing resolutions are hereby ratified, confirmed and approved.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/29/2020

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. 1166 Avenue of the Americas New York, NY 10036-2774 Attn: NewYork.Certs@marsh.com  CN101730110-GL-PL-19-20	<b>CONTACT NAME:</b> Maria Nicholson <b>PHONE (A/C, No. Ext):</b> 212-345-6754 <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> Maria.Nicholson@marsh.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Travelers Prop. Casualty Co. Of America</td> <td>25674</td> </tr> <tr> <td>INSURER B : The Travelers Indemnity Company</td> <td>25658</td> </tr> <tr> <td>INSURER C : Illinois Union Insurance Co</td> <td>27960</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 : Travelers Prop. Casualty Co. Of America	25674	INSURER B : The Travelers Indemnity Company	25658	INSURER C : Illinois Union Insurance Co	27960	INSURER D :		INSURER E :		INSURER F :
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<b>INSURED:</b> QUEST DIAGNOSTICS INCORPORATED 500 PLAZA DRIVE SECAUCUS, NJ 07094														

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-010874785-01                      **REVISION NUMBER:**

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 WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
X	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			Coverage is Self-Insured For A Retention of \$2,000,000  Excess Liability Applies After This Retention Is Exhausted			EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$	
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$	
C	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED    RETENTION \$			XFL G21820611 012	12/31/2019	12/31/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$	
A B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N    N/A <input checked="" type="checkbox"/> N    N/A			TC2JUB-266T3523-19 (AOS) TRKUB-266T3535-19 (AZ MA WI)	12/31/2019	12/31/2020	<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>  NH DHHS Attn: Christine A. Morin 129 Pleasant Street Concord, NH 03301	<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 of Marsh USA Inc. Maria Nicholson <i>Maria Nicholson</i>
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