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

Jeffrey A. Meyers
 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

November 14, 2018

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

REQUESTED ACTION

Authorize the Department of Health and Human Services (DHHS), to amend a **sole source** agreement with Chemware, LLC, 900 Ridgefield Drive, Suite 150 Raleigh, NC 27609 (Vendor #171140) for the provision of software maintenance and support and other optional services, by increasing the price limitation by \$7,500 from \$673,428 to \$680,928, with no change to the completion date of June 30, 2021, effective upon Governor and Executive Council approval. 100% Federal Funds.

The original agreement was approved by the Governor and Executive Council on March 9, 2016 (Item #54).

Funds to support this request are available in the following accounts for State Fiscal Year (SFY) 2019, and are anticipated to be available in SFY 2020 and SFY 2021, upon the availability and continued appropriation of funds in the future operating budgets, with authority to adjust amounts within the price limitation and adjust encumbrances between State Fiscal Years through the Budget Office, without further approval from Governor and Executive Council, if needed and justified.

FISCAL DETAILS

SFY	CAT#-DEPT#-AGENCY#-ACTIVITY#-ACCTG UNIT#- DEPT NAME-AGENCY NAME- ACCTG UNIT NAME . CLASS CODE-ACCOUNT CODE - OBJ (ACCOUNT) DESC	JOB #	Current Amount	Increase/ Decrease	Revised Amount
2016	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS – LIMS	03900078	\$83,228	\$0	\$83,228
2017	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS – LIMS	03900078	\$118,040	\$0	\$118,040
2018	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS – LIMS	03900078	\$118,040	\$0	\$118,040
2019	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS – LIMS	03900078	\$118,040	\$0	\$118,040

2019	05-095-090-903010-82800000-90082801 Division for Public Health Environmental Public Health and Emergency Response	90082801	\$0	\$7,500	\$7,500
2020	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS – LIMS	03900078	\$118,040	\$0	\$118,040
2021	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS – LIMS	03900078	\$118,040	\$0	\$118,040
		TOTAL	\$673,728	\$7,500	\$680,928

EXPLANATION

This request is **sole source** because the Contractor is currently providing report writing and instrument interface services for the Horizon Laboratory Information Management System (LIMS) used by the Public Health Laboratories (PHL), and has the expertise to develop a sophisticated custom biomonitoring report. The CDC has awarded the New Hampshire Expanded Biomonitoring Program additional funds to add to the report enhancement line of the contract with the PHL LIMS contractor, specifically to develop a custom biomonitoring report.

The purpose of this request is to allow the Contractor to develop a custom biomonitoring report. The Biomonitoring Program must present complex environmental and clinical testing results to the general population. This request, if approved, will provide funding to develop sophisticated reports that will allow the Department to present information in a format that can be read and understood by the general public. The custom reports will enable automated report generation by the LIMS, saving PHL staff substantial time and effort, while eliminating potential data entry and transcription errors. This custom report could also potentially be used in other environmental health investigations, expanding the PHL's ability to respond to environmental contamination incidents.

Notwithstanding any other provision of the contract to the contrary, no services shall continue after June 30, 2019, and the Department shall not be liable for any payments for services provided after June 30, 2019, unless and until an appropriation for these services has been received from the state legislature and funds encumbered for the SFY 2020-2021 biennium.


Should the Governor and Executive Council not authorize this request, The Department may not be able to process complex environmental and clinical testing results, and may not present the information to the public in a timely and efficient manner, as required by the CDC grant.

Area served: Statewide.

Source of Funds: 100% Federal Funds from Centers for Disease Control and Prevention, Environmental Public Health and Emergency Response Grant Catalogue of Federal Domestic Assistance (CFDA) #93.070, FAIN # U77EH0001142.

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


for Lisa M. Morris
Director


Approved by:
Jeffrey A. Meyers
Commissioner



STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY

27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doi

Denis Goulet
Commissioner

November 29, 2018

Jeffrey A. Meyers, Commissioner
Department of Health and Human Services
State of New Hampshire
129 Pleasant Street
Concord, NH 03301

Dear Commissioner Meyers:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a **sole source** contract amendment with Chemware, LLC, 900 Ridgefield Drive, Suite 150, Raleigh, NC 27609 (Vendor #171140) as described below and referenced as DoIT No. 2016-021A.

The purpose of this request is to enter into a **sole source** contract amendment with Chemware, LLC, to modify the scope of services to include developing a custom biomonitoring report for the New Hampshire Public Health Laboratory (PHL).

The funding amount for this amendment is \$7,500.00, increasing the current contract price from \$673,428.00 to \$680,928.00. This amendment shall become effective upon Governor and Executive Council approval through June 30, 2021.

A copy of this letter should accompany the Department of Health and Human Services' submission to the Governor and Executive Council for approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis Goulet", written over a horizontal line.

Denis Goulet

DG/kaf/ck
DoIT #2016-021A

cc: Bruce Smith, IT Manager, DoIT

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT #2016-021
CONTRACT AMENDMENT #1**

This 1st Amendment to the Chemware Maintenance Contract (hereinafter referred to as "Amendment #1") dated this 27th day of September 2018, is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and Chemware, LLC, (hereinafter referred to as "the Contractor"), a corporation with a place of business at 900 Ridgefield Drive, Suite 150 Raleigh, NC 27609.

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on March 9, 2016, (Item #54), 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, the State and the Contractor have agreed to make changes to the scope of work, payment schedules and terms and conditions of the contract; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 18, the State may modify the scope of work and the payment schedule of the contract upon written agreement of the parties and approval from the Governor and Executive Council; and

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

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

1. Form P-37, General Provisions, Block 1.1, State Agency Name, to read:
Department of Health and Human Services.
2. Form P-37, General Provisions, Block 1.2, State Agency Address, to read:
129 Pleasant St. Concord, NH 03301-3857.
3. Form P-37 General Provisions, Block 1.6, Account Number, to read:
05-095-090-903010-82800000-102-500731-90082801; 010-003-7695-0300-038-0175.
4. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:
\$680,928.
5. Form P-37, General Provisions, Block 1.9, Contracting Officer for State Agency, to read:
Nathan D. White, Director.
6. Form P-37, General Provisions, Block 1.10, State Agency Telephone Number, to read:
603-271-9631.
7. Contract 2016-021 Chemware Maintenance, Part 2, Section 1 Contract Documents, Subsection 1.1 Contract Documents, Paragraph C, to read:

Exhibit A – Contract Deliverables
Exhibit B – Price and Payment Schedule
Exhibit C - Special Provisions
Exhibit D – Administrative Services
Exhibit E – Implementation Services
Exhibit F – Testing Services
Exhibit G – Maintenance and Support Services
Exhibit H – Requirements
Exhibit I – Work Plan
Exhibit J – Software License and Related Terms
Exhibit K – Warranty and Warranty Services
Exhibit L – Certificates and Attachments
Exhibit M – DHHS Standard Exhibits

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT #2016-021
CONTRACT AMENDMENT #1**

Contract 2016-021 Chemware Maintenance, Part 2, Section 4 Contract Management, Subsection 4.4 State Contract Manager, to read:

The State shall assign a Contract Manager who shall function as the State's representative with regard to Contract administration. The State Contract Manager is:

Amy Bergquist
Finance Administrator
Division of Public Health Services-Public Health Laboratories
29 Hazen Drive
Concord, NH 03301
Telephone: 603-271-0183
Amy.Bergquist@dhhs.nh.gov

8. Delete Exhibit B, Price and Payment Schedule in its entirety and replace with: Exhibit B Amendment #1, Price and Payment Schedule.
- ✓ 9. Add Exhibit M DHHS Standard Exhibits.

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Except as provided herein, all provisions of the Agreement shall remain in full force and effect. This modification shall take effect upon the approval date from the Governor and the Executive Council.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

E. Sir
Chemware, LLC

Date: 11/12/2018

Corporate Signature Notarized:

STATE OF N.C

COUNTY OF Wake

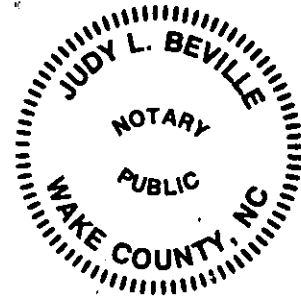
On this the 12 day of November, 2018, before the undersigned officer, personally appeared the person identified directly above, or satisfactory proven to be the person whose name is signed above, and acknowledged that s/he executed this document in the capacity indicated above.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Judy L. Beville
Notary Public/Justice of the Peace

My Commission Expires: 8/10/2020

(SEAL)



State of New Hampshire

Lisa M. Morris
Lisa M. Morris, Director

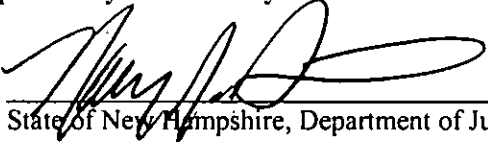
Date: 11/19/18

New Hampshire Division of Public Health Services

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

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT #2016-021
CONTRACT AMENDMENT #1

Approved by the Attorney General



State of New Hampshire, Department of Justice

Date: 12/4/2018

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

By: _____

Title: _____

Date: _____

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT A
DELIVERABLES**

1. DELIVERABLES, MILESTONES AND ACTIVITIES

Project Overview

The general scope of the project is to provide maintenance services for the Chemware Horizon Laboratory Information Management System (LIMS) originally Installed in 2003. Optional services such as report writing may be performed as needed, larger projects such as equipment interfaces will require Department of Information Technology approval.

General Project Assumptions

1. Chemware shall ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of the State's Information Technology resources, information, and services. Chemware shall provide the State resources, information, and Services on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and to safeguard the confidentiality and integrity of State networks, Systems and Data.
2. The Deliverables are set forth in the Schedule described below in Section 2. By unconditionally accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through completion of all Acceptance Testing, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.

Pricing for Deliverables set forth in Exhibit B: *Price and Payment Schedule*. Pricing will be effective for the Term of this Contract, and any extensions thereof.

2. DELIVERABLES, MILESTONES, AND ACTIVITIES SCHEDULE

Ref #	Deliverable	Deliverable Type
	CONTRACT YEAR 1 MAINTENANCE, SUPPORT AND ENHANCEMENTS (1/1/2016 - 6/30/2016)	
CY1- 1.0	Maintenance and Support	
CY1-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY1-2.0	Optional	
CY1-2.1	LIMS Upgrade to Horizon v11.1	Non-software
	CONTRACT YEAR 2	

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	MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2016 - 6/30/2017)	
CY2-1.0	Maintenance and Support	
CY2-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY2-2.0	Optional	
CY2-2.1	Optional Enhancements	
	CONTRACT YEAR 3 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2017 - 6/30/2018)	
CY3-1.0	Maintenance and Support	
CY3-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY3-2.0	Optional	
CY3-2.1	Optional Enhancements	
	CONTRACT YEAR 4 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2018 - 6/30/2019)	
CY4-1.0	Maintenance and Support	
CY4-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY4-2.0	Optional	
CY4-2.1	Optional Enhancements	
	CONTRACT YEAR MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2019 - 6/30/2020)	
CY5-1.0	Maintenance and Support	
CY5-1.1	Annual maintenance and support for Horizon and Oracle	Non-software

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CY5-2.0	Optional	
CY5-2.1	Optional Enhancements	
	CONTRACT YEAR 6 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2020 - 6/30/2021)	
CY6-1.0	Maintenance and Support	
CY6-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY6-2.0	Optional	
CY6-2.1	Optional Enhancements	

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EXHIBIT B AMENDMENT #1
PRICE AND PAYMENT SCHEDULE**

1. PAYMENT SCHEDULE

1.1 Firm Fixed Price

This is a Firm Fixed Price, not to exceed \$680,928, Maintenance and Optional Services Contract for the period between the Effective Date through 6/30/2021. Chemware shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow Chemware to invoice the State for the following activities, Deliverables, or milestones at fixed pricing/rates appearing in the price and payment tables below:

Ref #	Deliverable	Projected Delivery Date	Payment
	CONTRACT YEAR 1 MAINTENANCE, SUPPORT AND ENHANCEMENTS (1/1/2016 - 6/30/2016)		
CY1- 1.0	Maintenance and Support		
CY1-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$57,020
CY1-2.0	Optional		
CY1-2.1	LIMS Upgrade to Horizon v11.1	6/30/2016	\$26,208
		SUBTOTAL	\$83,228
	CONTRACT YEAR 2 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2016 - 6/30/2017)		
CY2- 1.0	Maintenance and Support		
CY2-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY2-2.0	Optional		
CY2-2.1	Optional Enhancements	6/30/2017	\$4,000
		SUBTOTAL	\$118,040
	CONTRACT YEAR 3 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2017 - 6/30/2018)		

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CY3-1.0	Maintenance and Support		
CY3-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY3-2.0	Optional		
CY3-2.1	Optional Enhancements	6/30/2018	\$4,000
		SUBTOTAL	\$118,040
	CONTRACT YEAR 4 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2018 - 6/30/2019)		
CY4-1.0	Maintenance and Support		
CY4-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY4-2.0	Optional		
CY4-2.1	Optional Enhancements	6/30/2019	\$11,500
		SUBTOTAL	\$125,540
	CONTRACT YEAR 5 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2019 - 6/30/2020)		
CY5-1.0	Maintenance and Support		
CY5-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY5-2.0	Optional		
CY5-2.1	Optional Enhancements	6/30/2020	\$4,000
		SUBTOTAL	\$118,040
	CONTRACT YEAR 6 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2020 - 6/30/2021)		
CY6-1.0	Maintenance and Support		
CY6-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,041
CY6-2.0	Optional		

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PRICE AND PAYMENT SCHEDULE**

CY6-2.1	Optional Enhancements	6/30/2021	\$4,000
		SUBTOTAL	\$118,040
		Grand Total	\$680,928

1.3 Future Vendor Rates Worksheet

The State may request additional Services from the selected Vendor and requires rates in the event that additional Service is required. The following format must be used to provide this information. "SFY" refers to State Fiscal Year. The New Hampshire State Fiscal Year runs from July 1 through June 30 of the following calendar year. Positions not identified in the Proposed Position Worksheet may be included in the Future Vendor Rates Worksheet.

Table 1.3: Future Vendor Rates Worksheet

Position Title	SFY 2016	SFY 2017	SFY 2018	SFY 2019	SFY 2020	SFY 2021
Project Manager	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour
Position #1	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour
Position #2	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour
Position #3	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour

1.4 Maintenance, and Support Pricing Worksheet

Pricing must reflect the payment of maintenance through the Contract end date. Price estimate should reflect the most optimistic implementation date. Actual payments may differ from the estimate if project start date slips or if implementation takes longer as this will cause a shorter maintenance period.

Table 1.4: Maintenance, and Support Pricing Worksheet

	Contract Year 1 *	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Contract Year 6
	SFY 2016	SFY 2017	SFY 2018	SFY 2019	SFY 2020	SFY 2021
Licenses	1/1/16 - 6/30/16	7/1/16 - 6/30/17	7/1/17 - 6/30/18	7/1/18 - 6/30/19	7/1/19 - 6/30/20	7/1/20 - 6/30/21
Central-One, unlt, 4 processor	\$35,467	\$70,934	\$70,934	\$70,934	\$70,934	\$70,934
Data Mgmt-Vision 52	\$8,760	\$17,519	\$17,519	\$17,519	\$17,519	\$17,519

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
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PRICE AND PAYMENT SCHEDULE**

named						
Data Mgmt-File Capture, 5 devices	\$428	\$857	\$857	\$857	\$857	\$857
HDM/Extraction Template Bldr, 1 server	\$490	\$979	\$979	\$979	\$979	\$979
Data Management Web-Vision, 1	\$533	\$1,067	\$1,067	\$1,067	\$1,067	\$1,067
Report Manager-Actuate 2 proc	\$5,468	\$10,936	\$10,936	\$10,936	\$10,936	\$10,936
Statistical Analysis, NWA, 5 conc	\$883	\$1,767	\$1,767	\$1,767	\$1,767	\$1,767
Autofaxing, 1 server	\$227	\$453	\$453	\$453	\$453	\$453
LimsLink with Interface, 12 instrument	\$2,473	\$4,946	\$4,946	\$4,946	\$4,946	\$4,946
Data Innovations, 4 instrument	\$1,196	\$2,392	\$2,392	\$2,392	\$2,392	\$2,392
SimpleIndex Barcode, 1 workstation	\$94	\$189	\$189	\$189	\$189	\$189
Oracle Forms Services	\$1,001	\$2,001	\$2,001	\$2,001	\$2,001	\$2,001
SUBTOTAL	\$57,020	\$114,040	\$114,040	\$114,040	\$114,040	\$114,040
SubTotal						\$627,220
* Contract Year 1 is a 6 months period.						

1.5 OPTIONAL SERVICES

Table 1.5: Optional Services

Optional SERVICES	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Optional Services to include Horizon 10 to 11 Upgrade services	\$26,208.					
Optional Services such as Special reports, interfaces, desired enhancements, or additional functionality		\$4,000	\$4,000	\$11,500	\$4,000	\$4,000
SUBTOTAL						\$53,708

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PRICE AND PAYMENT SCHEDULE**

1.6 SUMMARY – MAINTENANCE SUPPORT AND OPTIONAL SERVICES

Table 1.6: Optional Services

Service Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Totals
Maintenance and Support Services	\$57,020	\$114,040	\$114,040	\$114,040	\$114,040	\$114,040	\$627,220
Optional Services	\$26,208	\$4,000	\$4,000	\$11,500	\$4,000	\$4,000	\$53,708
SUBTOTALS	\$83,228	\$118,040	\$118,040	\$125,540	\$118,040	\$118,040	
GRAND TOTAL							\$680,928

2. CONTRACT PRICE

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed \$753,429 ("Total Contract Price"). The payment by the State of the total Contract price shall be the only, and the complete reimbursement to Chemware for all fees and expenses, of whatever nature, incurred by Chemware in the performance hereof.

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services performed under this Contract.

3. INVOICING

Chemware shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State's prior written approval, which shall not be unreasonably withheld. Chemware shall only submit invoices for Services or Deliverables as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Deliverable and identification of the Deliverable for which payment is sought, and the Acceptance date triggering such payment; date of delivery and/or installation; monthly maintenance charges; any other Project costs or retention amounts if applicable.

Upon Acceptance of a Deliverable, and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

Invoices shall be sent to:

Christine Bean
Department of Health and Human Services
Public Health Laboratory
29 Hazen Drive
Concord, NH 03301

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PRICE AND PAYMENT SCHEDULE**

4. PAYMENT ADDRESS

All payments shall be sent to the following address:

Email all remit advices to ~~AR@dlss.com~~ **AR@horizonlms.com**
ChemWare, LLC
28035 Network Place
Chicago, IL 60673-1280

5. OVERPAYMENTS TO Chemware

Chemware shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notice from the State.

6. CREDITS

The State may apply credits due to the State arising out of this Contract, against Chemware's invoices with appropriate information attached.

**STATE OF NEW HAMPSHIRE
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CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT C
SPECIAL PROVISIONS**

Use the special provision section to show appropriate changes to the terms outlined in the General Provisions.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT D
ADMINISTRATIVE SERVICES**

1. TRAVEL EXPENSES

The Chemware must assume all reasonable travel and related expenses. All labor rates will be "fully loaded", including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses.

2. SHIPPING AND DELIVERY FEE EXEMPTION

The State will not pay for any shipping or delivery fees unless specifically itemized in the Contract.

3. ACCESS/COOPERATION

As applicable, and subject to the applicable laws and regulations, the State will provide the Chemware with access to all program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware as required to complete the contracted Services.

The State will use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow the Chemware to perform its obligations under the Contract.

4. STATE-OWNED DOCUMENTS AND COPYRIGHT PRIVILEGES

The Chemware shall provide the State access to all State-owned documents, materials, reports, and other work in progress relating to this RFP. Upon expiration or termination of the Contract with the State, the Chemware shall turn over all State-owned documents, material, reports, and work in progress relating to this RFP to the State at no additional cost to the State. Documents must be provided in both printed and electronic format.

5. RECORDS RETENTION AND ACCESS REQUIREMENTS

Chemware shall agree to the conditions of all applicable State and federal laws and regulations, which are incorporated herein by reference, regarding retention and access requirements, including without limitation, retention policies consistent with the Federal Acquisition Regulations (FAR) Subpart 4.7 *Contractor Records Retention*.

Chemware and its Subcontractors shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. Chemware and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be

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kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. Chemware shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to Chemware's cost structure and profit factors shall be excluded from the State's review unless the cost of any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

6. ACCOUNTING REQUIREMENTS

Chemware shall maintain an accounting system in accordance with Generally Accepted Accounting Principles. The costs applicable to the Contract shall be ascertainable from the accounting system and Chemware shall maintain records pertaining to the Services and all other costs and expenditures.

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1. STATE MEETINGS AND REPORTS

Because Chemware System is installed and in operation and the following meetings and processes do not apply. This contract is primarily for the maintenance of the existing system. The Contract does however allow for approved projects to upgrade or add to the functionality of the software. In the case of such a project the following meetings and processes may apply upon agreement between the parties.

Chemware Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

- a. **Introductory Meeting:** Participants will include Chemware Key Project Staff and State Project leaders from both Department of Justice and the Department of Information Technology. This meeting will enable leaders to become acquainted and establish any preliminary Project procedures.
- b. **Kickoff Meeting:** Participants will include the State and Chemware Project Team and major stakeholders. This meeting is to establish a sound foundation for activities that will follow.
- c. **Status Meetings:** Participants will include, at the minimum, the Chemware Project Manager and the State Project Manager. These meetings will be conducted at least bi-weekly and address overall Project status and any additional topics needed to remain on schedule and within budget. A status and error report from Chemware shall serve as the basis for discussion.
- d. **The Work Plan:** must be reviewed at each Status Meeting and updated, at minimum, on a bi-weekly basis, in accordance with the Contract.
- e. **Special Meetings:** Need may arise for a special meeting with State leaders or Project stakeholders to address specific issues.
- f. **Exit Meeting:** Participants will include Project leaders from Chemware and the State. Discussion will focus on lessons learned from the Project and on follow up options that the State may wish to consider.

The State expects Chemware to prepare agendas and background for and minutes of meetings. Background for each status meeting must include an updated Work Plan. Drafting of formal presentations, such as a presentation for the kickoff meeting, will also be Chemware's responsibility.

The Chemware Project Manager or Chemware Key Project Staff shall submit monthly status reports in accordance with the Schedule and terms of this Contract. All status reports shall be prepared in formats approved by the State. The Chemware's Project Manager shall assist the State's Project Manager, or itself produce reports related to Project Management as reasonably requested by the State, all at no additional cost to the State. Chemware shall produce Project status reports, which shall contain, at a minimum, the following:

1. Project status related to the Work Plan;
2. Deliverable status;
3. Accomplishments during weeks being reported;

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4. Planned activities for the upcoming two (2) week period;
5. Future activities; and
6. Issues and concerns requiring resolution.
7. Report and remedies in case of falling behind Schedule

As reasonably requested by the State, Chemware shall provide the State with information or reports regarding the Project. Chemware shall prepare special reports and presentations relating to Project Management, and shall assist the State in preparing reports and presentations, as reasonably requested by the State, all at no additional cost to the State.

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The Chemware software is fully implemented, tested and accepted and thus the following testing procedures do not apply. The Contract does however allow for approved projects to upgrade or add to the functionality of the software. In the case of such a project the following testing procedures may apply.

1. TESTING AND ACCEPTANCE

Chemware shall bear all responsibilities for the full suite of Test Planning and preparation throughout the Project. Chemware will also provide training as necessary to the State staff responsible for test activities. Chemware shall be responsible for all aspects of testing contained in the Acceptance Test Plan including support, at no additional cost, during User Acceptance Test conducted by the State and the testing of the training materials.

The Test Plan methodology shall reflect the needs of the Project and be included in the finalized Work Plan. A separate Test Plan and set of test materials will be prepared for each Software function or module.

All Testing and Acceptance (both business and technically oriented testing) shall apply to testing the System as a whole, (e.g., software modules or functions, and Implementation(s)). This shall include planning, test scenario and script development, Data and System preparation for testing, and execution of Unit Tests, System Integration Tests, Conversion Tests, Installation tests, Regression tests, Performance Tuning and Stress tests, Security Review and tests, and support of the State during User Acceptance Test and Implementation.

In addition, Chemware shall provide a mechanism for reporting actual test results vs. expected results and for the resolution and tracking of all errors and problems identified during test execution. Chemware shall also correct Deficiencies and support required re-testing.

1.1 Test Planning and Preparation

Chemware shall provide the State with an overall Test Plan that will guide all testing. The Chemware provided, State approved, Test Plan will include, at a minimum, identification, preparation, and Documentation of planned testing, a requirements traceability matrix, test variants, test scenarios, test cases, test scripts, test Data, test phases, unit tests, expected results, and a tracking method for reporting actual versus expected results as well as all errors and problems identified during test execution.

As identified in the Acceptance Test Plan, and documented in accordance with the Work Plan and the Contract, State testing will commence upon Chemware's Project Manager's Certification, in writing, that Chemware's own staff has successfully executed all prerequisite Chemware testing, along with reporting the actual testing results, prior to the start of any testing executed by State staff. The State will be presented with a State approved Acceptance Test Plan, test scenarios, test cases, test scripts, test data, and expected results.

The State will commence its testing within <five (5) business days> of receiving Certification from Chemware that the State's personnel have been trained and the System is installed, configured, complete, and ready for State testing. The testing will be conducted by the State in an environment

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independent from Chemware's development environment. Chemware must assist the State with testing in accordance with the Test Plan and the Work Plan, utilizing test and live Data to validate reports, and conduct stress and performance testing, at no additional cost.

Testing begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

Chemware must demonstrate that their testing methodology can be integrated with the State standard methodology.

1.2 Unit Testing

In Unit Testing, Chemware shall test the application components on an individual basis to verify that the inputs, outputs, and processing logic of each application component functions without errors. Unit testing is performed in either the development environment or a testing environment.

The goal is to find errors in the smallest unit of software before logically linking it into larger units. If successful, subsequent testing should only reveal errors related to the integration between application modules.

The Chemware developer, who is responsible for a specific unit of work, will be responsible for conducting the unit testing of their modules.

Activity Description	Develop the scripts needed to unit test individual application modules, interface(s) and conversion components.
Chemware Team Responsibilities	For application modules, conversions and interfaces the Chemware team will identify applicable test scripts and installation instructions, adapt them to the Project specifics, test the process, and compare with the documented expected results.
Work Product Description	Unit-Tested Modules that have been tested to verify that the inputs, outputs, and processing logic of each application module functions without errors. Individual detailed test scripts and installation guides list all the required actions and data to conduct the test, the process for test execution, and the expected results.

1.3 System Integration Testing

The new System is tested in integration with other application systems (legacy and service providers) in a production-like environment. System Integration Testing validates the integration between the individual unit application modules and verifies that the new System meets defined requirements and supports execution of interfaces and business processes. The System Integration Test is performed in a test environment.

Thorough end-to-end testing shall be performed by the Chemware team(s) to confirm that the Application integrates with any interfaces. The test emphasizes end-to-end business processes, and the flow of information across applications (IF APPROPRIATE). It includes all key business

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processes and interfaces being implemented, confirms data transfers with external parties, and includes the transmission or printing of all electronic and paper documents.

Activity Description	Systems Integration Testing: validates the integration between the target application modules and other systems, and verifies that the new System meets defined interface requirements and supports execution of business processes. This test emphasizes end-to-end business processes and the flow of information across the application. It includes all key business processes and interfaces being implemented, confirms data transfers with external parties, and includes the transmission or printing of all electronic and paper documents.
Chemware Team Responsibilities	<ul style="list-style-type: none"> • Take the lead in developing the Systems Integration Test Specifications. • Work jointly with the State to develop and load the data profiles to support the test Specifications. • Work jointly with the State to validate components of the test scripts.
State Responsibilities	<ul style="list-style-type: none"> • Work jointly with Chemware to develop the Systems Integration Test Specifications. • Work jointly with Chemware to develop and load the data profiles to support the test Specifications. • Work jointly with Chemware to validate components of the test scripts, modifications, fixes and other System interactions with the Chemware supplied Software Solution.
Work Product Description	<ul style="list-style-type: none"> • The Integration-Tested System indicates that all interfaces between the application and the legacy and third-party systems, interfaces, and applications are functioning properly.

1.4 Conversion Validation Testing

In Conversion Validation Testing, target application functions are validated.

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Activity Description	The conversion validation test should replicate the entire flow of the converted data through the Software Solution. As the Software Solution is interfaced to legacy or third-party applications/interfaces, testing verifies that the resulting flow of the converted data through these interface points performs correctly.
Chemware Team Responsibilities	For conversions and interfaces, the Chemware team will execute the applicable validation tests and compare execution results with the documented expected results.
State Responsibilities	Extract and cleanse, if necessary, the legacy data to be converted in the data conversions. <CAN MAKE THIS A Chemware RESPONSIBILITY>
Work Product Description	Validation-Tested Conversion Programs. These programs include conversion programs that have been tested to verify that the resulting converted legacy data performs correctly in the entire suite of the Application.

1.5 Installation Testing

In Installation Testing the application components are installed in the System Test environment to test the installation routines and are refined for the eventual production environment. This activity serves as a dry run of the installation steps in preparation for configuring the production system.

1.6 User Acceptance Testing (UAT)

UAT begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

The Chemware's Project Manager must certify in writing, that the Chemware's own staff has successfully executed all prerequisite Chemware testing, along with reporting the actual testing results prior to the start of any testing executed by State staff.

The State shall be presented with all testing results, as well as written Certification that Chemware has successfully completed the prerequisite tests, meeting the defined Acceptance Criteria, and performance standards. The State shall commence testing within five (5) business days of receiving Certification, in writing, from Chemware that the system is installed, configured, complete and ready for State testing. The State shall conduct the UAT utilizing scripts developed as identified in the Acceptance Test Plan to validate the functionality of the System and the interfaces, and verify Implementation readiness. UAT is performed in a copy of the production environment and can serve as a performance and stress test of the System. The User Acceptance Test may cover any aspect of the new System, including administrative procedures (such as backup and recovery).

The User Acceptance Test (UAT) is a verification process performed in a copy of the production environment. The User Acceptance Test verifies System functionality against predefined Acceptance criteria that support the successful execution of approved business processes.

UAT will also serve as a performance and stress test of the System. It may cover any aspect of the new System, including administrative procedures such as backup and recovery. The results of the UAT provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.

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The results of the User Acceptance Test provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.

Upon successful conclusion of UAT and successful System deployment, the State will issue a letter of UAT Acceptance and the respective Warranty Period shall commence

Activity Description	The System User Acceptance Tests verify System functionality against predefined Acceptance criteria that support the successful execution of approved processes.
Chemware Team Responsibilities	<ul style="list-style-type: none"> • Provide the State an Acceptance Test Plan and selection of test scripts for the Acceptance Test. • Monitor the execution of the test scripts and assist as needed during the User Acceptance Test activities. • Work jointly with the State in determining the required actions for problem resolution.
State Responsibilities	<ul style="list-style-type: none"> • Approve the development of the User Acceptance Test Plan and the set of data for use during the User Acceptance Test. • Validate the Acceptance Test environment. • Execute the test scripts and conduct User Acceptance Test activities. • Document and summarize Acceptance Test results. • Work jointly with Chemware in determining the required actions for problem resolution. • Provide Acceptance of the validated Systems.
Work Product Description	The Deliverable for User Acceptance Tests is the User Acceptance Test Results. These results provide evidence that the new System meets the User Acceptance criteria defined in the Work Plan.

1.7 Performance Tuning and Stress Testing

Chemware shall develop and document hardware and Software configuration and tuning of the Horizon infrastructure as well as assist and direct the State's System Administrators and Database Administrators in configuring and tuning the infrastructure to support the software throughout the Project

1.7.1 Scope

The scope of **Performance Testing** shall be to measure the System level metrics critical for the development of the applications infrastructure and operation of the applications in the production environment.

It will include the measurement of response rates of the application for end-user transactions and resource utilization (of various servers and network) under various load conditions. These response rates shall become the basis for changes and retesting until optimum System performance is achieved.

Performance testing and tuning shall occur in the final production environment and shall use a copy of the final production database to provide the best results.

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1.7.2 Test Types

Performance testing shall use two different types of testing to determine the stability of the application. They are baseline tests and load tests.

- a) **Baseline Tests:** Baseline tests shall collect performance data and load analysis by running scripts where the output is broken down into business transactions or functions. The test is like a single user executing a defined business transaction. During baseline testing, each individual script is run to establish a baseline for transaction response time, throughput and other user-based metrics.
- b) **Load Tests:** Load testing will determine if the behavior of the System can be sustained over a long period of time while running under expected conditions. Load test helps to verify the ability of the application environment under different load conditions based on workload distribution. System response time and utilization is measured and recorded.

1.7.3 Tuning

Tuning will be Chemware led and occur during both the development of the application and load testing. Tuning is the process whereby the application performance is maximized. This can be the result of making code more efficient during development as well as making tuning parameter changes to the environment.

1.7.4 Implementing Performance and Stress Test

Performance and stress test tools must be provided by the Chemware for this effort. Consideration must be given to licensing with respect to continued use for regression testing. If the Chemware is familiar with open source low/no cost tools for this purpose those tools should be identified in your response.

1.7.5 Scheduling Performance and Stress Testing

Chemware shall perform Test Planning. The steps for planning include identification of application functionality as well as what percentage of normal daily use is represented by each function. This information will become the foundation for scripting so that tests closely represent what loads in production will look like.

Chemware shall provide definition and expectations from testing. This definition should include who is in charge of testing and coordinating results, anticipated run times, logs required for tracking, their locations and which technician is responsible to track and provide them following each test to the team.

Initial test runs shall be completed to establish that the tests and data sets can be run to completion without errors. The ratio of types of transactions which makeup the test shall be reviewed prior to the beginning of testing and then again once testing has begun to make sure that testing accurately reflects the system performing in production.

Initial tests shall be used to establish a baseline from which all subsequent tests will be compared. Tests will be considered for baseline status once two of them have been run within 2% of each other in key and overall performance areas. No changes to the test scripts or data sets (with the exception of restores after each test) can be done to the test environment once tuning has begun so as not to damage the comparison to baseline results. The systems must be restarted prior to each test run to assure all cache is cleaned out. All effort will be made to run these tests at a time when

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system and network infrastructure utilization doesn't impact the results. Tests will be run in close proximity to our infrastructure so as to eliminate the public network from our environment.

Post test reporting and result assessment will be scheduled following each test. The team will compare these results to the baseline and a determination must be made to make additional changes to the parameter being tuned or return to the prior configuration and select another parameter to tune while keeping in mind that significant changes to any one parameter may require the retesting of some others. Careful work on identifying dependencies up front should minimize this impact.

If defects are identified in the application during testing they will be recorded; however, changes to the application code should be avoided if possible so as not to affect baseline comparisons. If a change to the application is required new baselines will be established (and possibly the execution of prior tests to validate changes with the new application) before testing can continue.

When performing capacity testing against a GUI the focus will be on the ability of the interface to respond to user input.

During stress/load testing the tester will attempt to stress or load an aspect of the system to the point of failure. The goal is to determine weak points in the system architecture. The tester will identify peak load conditions at which the program will fail to handle required processing loads within required time spans.

During Performance testing the tester will design test case scenarios to determine if the system meets the stated performance criteria (i.e. A Login request shall be responded to in 1 second or less under a typical daily load of 1000 requests per minute.). In both cases the tester will determine the capacity of the system under a known set of conditions.

1.8 Regression Testing

As a result, of the user testing activities, problems will be identified that require correction. The State will notify the Chemware of the nature of the testing failures in writing. The Chemware will be required to perform additional testing activities in response to State and/or user problems identified from the testing results. Regression testing means selective re-testing to detect faults introduced during the modification effort, both to verify that the modifications have not caused unintended adverse effects, and to verify that the modified and related (possibly affected) System components still meet their specified requirements:

- a.) For each minor failure of an Acceptance Test, the Acceptance Period shall be extended by corresponding time defined in the Test Plan.
- b.) Chemware shall notify the State no later than <five (5) business days> from the Chemware's receipt of written notice of the test failure when Chemware expects the corrections to be completed and ready for retesting by the State. Chemware will have up to five (5) business days to make corrections to the problem unless specifically extended in writing by the State.

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c.) When a programming change is made in response to a problem identified during user testing, a regression Test Plan should be developed by Chemware based on the understanding of the program and the change being made to the program. The Test Plan has two objectives:

1. validate that the change/update has been properly incorporated into the program; and
2. validate that there has been no unintended change to the other portions of the program.

d.) Chemware will be expected to:

1. Create a set of test conditions, test cases, and test data that will validate that the change has been incorporated correctly;
2. Create a set of test conditions, test cases, and test data that will validate that the unchanged portions of the program still operate correctly; and
3. Manage the entire cyclic process.

e.) Chemware will be expected to execute the regression test, provide actual testing results, and certify its completion in writing to the State prior to passing the modified Software application to the users for retesting.

In designing and conducting such regression testing, Chemware will be required to assess the risks inherent to the modification being implemented and weigh those risks against the time and effort required for conducting the regression tests. In other words, Chemware will be expected to design and conduct regression tests that will identify any unintended consequences of the modification while taking into account Schedule and economic considerations.

1.9 Security Review and Testing

IT Security involves all functions pertaining to the securing of State Data and Systems through the creation and definition of security policies, procedures and controls covering such areas as identification, authentication and non-repudiation.

All components of the Software shall be reviewed and tested to ensure they protect the State's hardware and software and its related Data assets. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability. Tests shall, at a minimum, cover each of the service components. Test procedures shall include penetration tests (pen tests), code analysis, and review.

Service Component	Defines the set of capabilities that:
Identification and Authentication	Supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users
Access Control	Supports the management of permissions for logging onto a computer or network
Encryption	Supports the encoding of data for security purposes
Intrusion Detection	Supports the detection of illegal entrance into a computer system

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Verification	Supports the confirmation of authority to enter a computer system, application or network
Digital Signature	Guarantees the unaltered state of a file
User Management	Supports the administration of computer, application and network accounts within an organization.
Role/Privilege Management	Supports the granting of abilities to users or groups of users of a computer, application or network
Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system
Input Validation	Ensures the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server.

Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability. Tests shall, at a minimum, cover each of the service components. The Chemware shall provide a certificate of application, vulnerability scanning, and 3rd party Penetration Tests (pen test) when appropriate.

Prior to the System being moved into production Chemware shall provide results of all security testing to the Department of Information Technology for review and Acceptance. All Software and hardware shall be free of malicious code (malware).

1.10 Successful UAT Completion

Upon successful completion of UAT, the State will issue a Letter of UAT Acceptance.

1.11 System Acceptance

Upon completion of the Warranty Period, the State shall issue a Letter of Final System Acceptance.

1.12 Penetration Testing shall include:

~~<delete requirements that are specific to PCI testing>~~

Implement a methodology for penetration testing that includes the following:

- Is based on industry-accepted penetration testing approaches (for example, NIST SP800-115)
- Includes coverage for the entire CDE perimeter and critical systems
- Includes testing from both inside and outside the network
- Includes testing to validate any segmentation and scope-reduction controls
- Defines application-layer penetration tests to include, at a minimum, the vulnerabilities listed in Requirement 6.5
- Defines network-layer penetration tests to include components that support network functions

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as well as operating systems

- Includes review and consideration of threats and vulnerabilities experienced in the last 12 months
- Specifies retention of penetration testing results and remediation activities results.

Perform *external* penetration testing at least annually and after any significant infrastructure or application upgrade or modification (such as an operating system upgrade, a sub-network added to the environment, or a web server added to the environment).

Perform internal penetration testing at least annually and after any significant infrastructure or application upgrade or modification (such as an operating system upgrade, a sub-network added to the environment, or a web server added to the environment).

Exploitable vulnerabilities found during penetration testing are corrected and testing is repeated to verify the corrections.

If segmentation is used to isolate the CDE from other networks, perform penetration tests at least annually and after any changes to segmentation controls/methods to verify that the segmentation methods are operation and effective, and isolate all out-of-scope systems from in-scope systems.

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EXHIBIT G
MAINTENANCE AND SUPPORT SERVICES**

1. SYSTEM MAINTENANCE

Chemware shall maintain and support the Horizon LIMS System in all material respects as described in the applicable program Documentation through the contract end date.

1.1 Chemware's Responsibility

Chemware shall maintain the Horizon LIMS in accordance with the Contract. Chemware will not be responsible for maintenance or support for Software developed or modified by the State.

1.1.1 Maintenance Releases

Chemware shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.

2. SYSTEM SUPPORT

2.1 Chemware's Responsibility

Chemware will be responsible for performing on-site or remote technical support in accordance with the Contract Documents, including without limitation the requirements, terms, and conditions contained herein.

As part of the Software maintenance agreement, ongoing Software maintenance and support levels, including all new Software releases, shall be responded to according to the following:

a. Severity 1 Deficiencies (Telephone Support)

For all Class A Deficiencies, Chemware shall provide, to the State, on-call telephone assistance, with issue tracking available to the State, 8:00 AM - 6:00 PM EST Monday through Friday with an immediate e-mail / telephone response;

b. Severity 1 Deficiencies (On-site or Remote Support)

For all Class A Deficiencies, Chemware shall provide support on-site, or with remote diagnostic services, within one (1) hour of a request; and

c. Severity 3 Deficiencies - The State shall notify Chemware of such Deficiencies during regular business hours and the Chemware shall respond back within four (4) hours of notification

3. SUPPORT OBLIGATIONS AND TERM

3.1 Chemware shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications and terms and requirements of the Contract;

3.2 Chemware shall maintain a record of the activities related to warranty repair or maintenance activities performed for the State;

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- 3.3 For all maintenance Services calls, Chemware shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information, 6) Resolved by, 7) Identifying number i.e. work order number, 8) Issue identified by; and
- 3.4 Chemware must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.
- 3.5 If Chemware fails to correct a Deficiency within the allotted period of time stated above, Chemware shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 2 Section 13.1.1.2, as well as to return Chemware's product and receive a refund for all amounts paid to Chemware, including but not limited to, applicable license fees, within ninety (90) days of notification to Chemware of the State's refund request
- 3.6 If Chemware fails to correct a Deficiency within the allotted period of time stated above, Chemware shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 1, Section 14.

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REQUIREMENTS**

This contract is for maintenance services of the Horizon LIMS system which is already installed, tested and hosted on State servers. Should a major project be proposed as part of the contract optional project provisions, requirements shall be developed and agreed upon by the parties for that project.

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WORK PLAN**

This contract is for maintenance services of the Horizon LIMS system which is already installed, tested and hosted on State servers. Should a major project be proposed as part of the contract optional project provisions, a work plan shall be developed and approved by the DHHS' Public Health Laboratory and the Department of Information Technology.

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EXHIBIT J
SOFTWARE LICENSE**

1. LICENSE GRANT

Subject to the payment of applicable license fees set forth in Contract Exhibit B: *Price and Payment Schedule*, Chemware hereby grants to the State a worldwide, perpetual, irrevocable, non-exclusive, non-transferable, limited license to use the Software and its associated Documentation, subject to the terms of the Contract. The State may allow its agents and Contractors to access and use the Software, and in such event, the State shall first obtain written agreement from such agents and Contractors that each shall abide by the terms and conditions set forth herein.

2. SOFTWARE AND DOCUMENTATION COPIES

Chemware shall provide the State with a sufficient number of hard copy versions of the Software's associated Documentation and one (1) electronic version in Microsoft WORD and PDF format. The State shall have the right to copy the Software and its associated Documentation for its internal business needs. The State agrees to include copyright and proprietary notices provided to the State by the Chemware on such copies.

3. RESTRICTIONS

Except as otherwise permitted under the Contract, the State agrees not to:

- a. Remove or modify any program markings or any notice of Chemware's proprietary rights;
- b. Make the programs or materials available in any manner to any third party for use in the third party's business operations, except as permitted herein; or
- c. Cause or permit reverse engineering, disassembly or recompilation of the programs.

4. TITLE

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with Chemware.

5. VIRUSES

Chemware shall provide Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

As a part of its internal development process, Chemware will use reasonable efforts to test the Software for viruses. Chemware shall also maintain a master copy of the appropriate versions of the Software, free of viruses. If the State believes a virus may be present in the Software, then upon its request, Chemware shall provide a master copy for comparison with and correction of the State's copy of the Software.

6. AUDIT

Upon forty-five (45) days written notice, Chemware may audit the State's use of the programs at Chemware's sole expense. The State agrees to cooperate with Chemware's audit and provide reasonable assistance and access to information. The State agrees that Chemware shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. Notwithstanding the foregoing, Chemware's audit rights are subject to applicable State and federal laws and regulations.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT J
SOFTWARE LICENSE

7. SOFTWARE NON-INFRINGEMENT

Chemware warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

The warranty of non-infringement shall be an on-going and perpetual obligation that shall survive termination of the Contract. In the event that someone makes a claim against the State that any Material infringe their intellectual property rights, Chemware shall defend and indemnify the State against the claim provided that the State:

- a. Promptly notifies Chemware in writing, not later than 30 days after the State receives actual written notice of such claim;
- b. Gives Chemware control of the defense and any settlement negotiations; and
- c. Gives Chemware the information, authority, and assistance reasonably needed to defend against or settle the claim.

Notwithstanding the foregoing, the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

If Chemware believes or it is determined that any of the Material may have violated someone else's intellectual property rights, Chemware may choose to either modify the Material to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Chemware may end the license, and require return of the applicable Material and refund all fees the State has paid Chemware under the Contract. Chemware will not indemnify the State if the State alters the Material without Chemware's consent or uses it outside the scope of use identified in Chemware's user Documentation or if the State uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the State at no additional cost. Chemware will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, data, or material not furnished by Chemware. Chemware will not indemnify the State to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Chemware without Chemware's consent.

8. SOFTWARE ESCROW

8.1 Chemware represents and warrants that the currently existing source code for the Software licensed to the State under the Contract, as well as the Documentation for such Software, and developer comments to the source code for the Software (the "Deposit Materials") have been deposited in an escrow account maintained in ~~the location of the escrow agent~~ *Access* "Escrow Agent") as required by this Contract. Future Deposit Materials for major version releases (e.g., X.y.z) of the Software not otherwise delivered to the State Licensee as source code shall be deposited in the escrow account (normally within six (6) months after the first commercial shipment of each such release). Chemware shall promptly pay to the Escrow Agent all escrow fees that become due under the Escrow Agreement to maintain the Software in escrow.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT J
SOFTWARE LICENSE**

- 8.2 Chemware agrees that, upon execution of this Contract, the State shall be added to the Escrow Agreement as a beneficiary. The Escrow Agent shall notify the State that it has been added as a subscriber within a commercially reasonable time. Thereafter, upon the request of the State, to be made no more frequently than annually, Chemware shall provide the State with written verification that the Software has been deposited with the Escrow Agent.
- 8.3 The Escrow Agent shall make and release a copy of the applicable Deposit Materials to the State upon the occurrence of any of the following events ("Release Events"):
- (a) Chemware has made an assignment for the benefit of creditors;
 - (b) Chemware institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind;
 - (c) A receiver or similar officer has been appointed to take charge of all or part of Chemware's assets;
 - (d) Chemware terminates its maintenance and operations support services for the State for the Software or has ceased supporting and maintaining the Software for the State whether due to its ceasing to conduct business generally or otherwise, except in cases where the termination or cessation is a result of the non-payment or other fault of the State;
 - (e) Chemware defaults under the Contract; or
 - (f) Chemware ceases its on-going business operations or that portion of its business operations relating to the licensing and maintenance of the Software.
- 8.4 In the event that Deposit Materials are released from escrow to the State, Chemware hereby grants the State the right to use, copy, modify, display, distribute, and prepare derivative works of the Deposit Materials, and to authorize others to do the same on behalf of the State (Contractors, agents, etc.), solely for the purpose of completing the performance of Chemware's obligations under the Contract, including, but not limited to, providing maintenance and support for the Software and subject to the rights granted in this Contract.
- 8.5 Chemware agrees to pay all costs associated with the escrow covered by this Contract, except for nominal fees to cover the cost of reproduction and distribution of release of the Deposit Materials to the State, including all related reasonable administrative expenses.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT K
WARRANTY AND WARRANTY SERVICES**

1. WARRANTIES

1.1 System

(Chemware) warrants that the System will operate to conform to the Specifications, terms, and requirements of the Contract.

1.2 Software

Chemware warrants that the Software, including but not limited to the individual modules or functions furnished under the Contract, is properly functioning within the System, compliant with the requirements of the Contract, and will operate in accordance with the Specifications and Terms of the Contract.

For any breach of the above Software warranty, the State's remedy, and Chemware's entire liability, shall be: (a) the correction of program errors that cause breach of the warranty, or if Chemware cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to Chemware for the program license and any unused, prepaid technical support fees the State has paid for the program license; or (b) the re-performance of the deficient Services, or (c) if Chemware cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Chemware for the deficient Services.

1.3 Non-Infringement

Chemware warrants that it has good title to, or the right to allow the State to use, all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

1.4 Viruses; Destructive Programming

Chemware warrants that the Software shall not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

1.5 Compatibility

Chemware warrants that all System components, including but not limited to the components provided, including any replacement or upgraded System Software

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT K
WARRANTY AND WARRANTY SERVICES**

components provided by Chemware to correct Deficiencies or as an Enhancement, shall operate with the rest of the System without loss of any functionality.

1.6 Services

Chemware warrants that all Services to be provided under the Contract will be provided expeditiously, in a professional manner, in accordance with industry standards and that Services will comply with performance standards, Specifications, and terms of the Contract.

2. WARRANTY PERIOD

The Warranty Period shall remain in effect until the conclusion or termination of this Contract and any extensions.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021 PART 3
EXHIBIT L
CERTIFICATES AND ATTACHMENTS**

Attached are:

- A. Contractor's Certificate of Vote/Authority
- B. Contractor's Certificate of Good Standing
- C. Contractor's Certificate of Insurance



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



- 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: ChemWare LLC.

11/2/2018

Date

E. Dingfelder

Name: Eric Dingfelder
Title: General Manager



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-I.)
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: Edham Ware LLC

11/2/2018
Date

Eric Orzfeldt
Name: Eric Orzfeldt
Title: General Manager



**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



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

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

PRIMARY COVERED TRANSACTIONS

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

LOWER TIER COVERED TRANSACTIONS

13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 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: ChamWare LLC

11/2/2019
Date

Eric Dwyfelder
Name: Eric Dwyfelder
Title: General Manager

Contractor Initials EO
Date 11/2/2019



**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

ED

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

1/11/2018

Exhibit M DHHS Standard Exhibits
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: ChemWare LLC

11/2/2014

Date

E. Dingfelder
Name: Erick Dingfelder
Title: General Manager

Exhibit G

Contractor Initials EO

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



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: ChemWare LLC

11/2/2018

Date

Name: Eric Omsfelder
Title: General Manager



Exhibit I

HEALTH INSURANCE PORTABILITY ACT
BUSINESS ASSOCIATE AGREEMENT

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

(1) **Definitions.**

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



Exhibit I

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

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

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



Exhibit I

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

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

(3) Obligations and Activities of Business Associate.

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
- o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
 - o The unauthorized person used the protected health information or to whom the disclosure was made;
 - o Whether the protected health information was actually acquired or viewed
 - o The extent to which the risk to the protected health information has been mitigated.

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

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



Exhibit I

- pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.
- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
 - g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
 - h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
 - i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
 - j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
 - k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
 - l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business



Exhibit I

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

(4) Obligations of Covered Entity

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

(5) Termination for Cause

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

(6) Miscellaneous

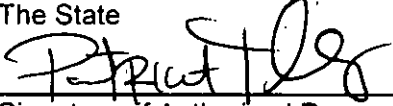
- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security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



Exhibit I

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

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

The State



Signature of Authorized Representative
Lisa MORRIS

Name of Authorized Representative
Director, DPHS, NH DHHS

Title of Authorized Representative
11/19/18

Date

ChemWare LLC

Name of the Contractor


Signature of Authorized Representative
Eric Dingfelder

Name of Authorized Representative
General Manager

Title of Authorized Representative
11/2/2018

Date



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

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

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

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

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

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

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

Contractor Name: ChemWare LLC

11/21/2014

Date

[Signature]
Name: Eric Dingfelder
Title: General Manager

Contractor Initials EO

Date 11/21/2014



FORM A

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

1. The DUNS number for your entity is: 613462084
2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

NO YES

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

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

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

NO YES

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

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

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

Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____
Name: _____	Amount: _____



Exhibit K

DHHS Information Security Requirements

A. Definitions

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

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

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

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

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DHHS Information Security Requirements

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

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

I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR

A. Business Use and Disclosure of Confidential Information.

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



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DHHS Information Security Requirements

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

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

II. METHODS OF SECURE TRANSMISSION OF DATA

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



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

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

III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS

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

A. Retention

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



Exhibit K

DHHS Information Security Requirements

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

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

B. Disposition

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

IV. PROCEDURES FOR SECURITY

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



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DHHS Information Security Requirements

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



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

12. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.
13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doi/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
14. Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify the State's Privacy Officer, and additional email addresses provided in this section, of any security breach within two (2) hours of the time that the Contractor learns of its occurrence. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.
15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.
16. The Contractor must ensure that all End Users:
 - a. comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.
 - b. safeguard this information at all times.
 - c. ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.
 - d. send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.



Exhibit K

DHHS Information Security Requirements

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

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

V. LOSS REPORTING

The Contractor must notify the State's Privacy Officer, Information Security Office and Program Manager of any Security Incidents and Breaches within two (2) hours of the time that the Contractor learns of their occurrence.

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

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

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Exhibit K

DHHS Information Security Requirements

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

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

VI. PERSONS TO CONTACT

- A. DHHS contact for Data Management or Data Exchange issues:

DHHSInformationSecurityOffice@dhhs.nh.gov

- B. DHHS contacts for Privacy issues:

DHHSPrivacyOfficer@dhhs.nh.gov

- C. DHHS contact for Information Security issues:

DHHSInformationSecurityOffice@dhhs.nh.gov

- D. DHHS contact for Breach notifications:

DHHSInformationSecurityOffice@dhhs.nh.gov

DHHSPrivacy.Officer@dhhs.nh.gov

EO

11/2/2019

State of New Hampshire

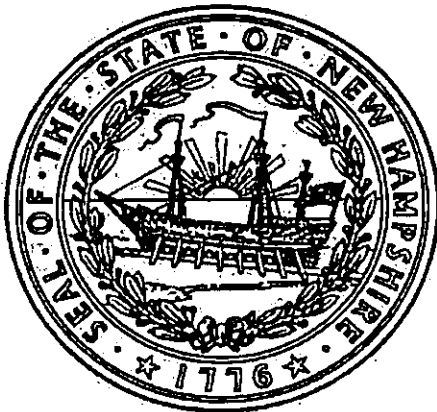
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that CHEMWARE, LLC is a Wisconsin Limited Liability Company registered to transact business in New Hampshire on February 10, 2016. 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: 738754

Certificate Number: 0004206602



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 31st day of October A.D. 2018.

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

William M. Gardner
Secretary of State

I, Eric Dingfelder, do hereby certify that I am the General Manager of Chem Ware, LLC and, as such, am authorized to enter into contracts and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as I may deem necessary, desirable or appropriate on behalf of Chem Ware, LLC.

Eric Dingfelder

(Signature of Company Officer)

11/12/2018

Date

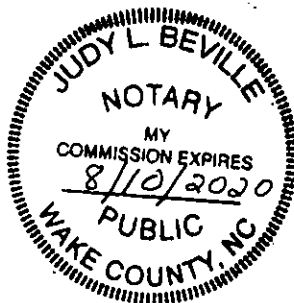
STATE OF N.C.

COUNTY OF wake

On this the 12 day of November, 2018, before me Judy L Beville
(day) (month) (Name of Notary Public)

the undersigned officer, personally appeared Eric Dingfelder
(Company Officer- Print Name)

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposed therein contained. In witness whereof, I hereunto set my hand and official seal.



Judy L Beville
(Notary Public)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/31/2018

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).

PRODUCER Marsh USA Inc. 411 E. Wisconsin Avenue Suite 1300 Milwaukee, WI 53202 Attn: milwaukee.certrequest@marsh.com;212-948-4348	CONTACT NAME: _____	
	PHONE (A/C, No, Ext): _____	FAX (A/C, No): _____
E-MAIL ADDRESS: _____		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Travelers Property Casualty Company of America		25674
INSURER B: Phoenix Insurance Company		25623
INSURER C: Travelers Indemnity Company of Connecticut		25682
INSURER D: N/A		N/A
INSURER E:		
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** CHI-008399403-12 **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
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			6307K400843	03/16/2018	03/16/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 Deductible \$ 5,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA7K397650	03/16/2018	03/16/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ 10,000			CUP7K452409	03/16/2018	03/16/2019	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$
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/A <input checked="" type="checkbox"/> N N/A			UB7K398019	03/16/2018	03/16/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

CERTIFICATE HOLDER

State of New Hampshire
 Department of Administrative Services
 25 Capitol Street
 Concord, NH 03301

CANCELLATION

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.

Manashi Mukherjee

Manashi Mukherjee

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ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh USA Inc.		NAMED INSURED ChemWare, LLC 900 Ridgefield Drive Raleigh, NC 27609	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Property
 Policy Number: 6307K400843
 Carrier: Travellers Property Casualty Company of America
 Effective Date: 03/16/2018
 Expiration Date: 03/16/2019

Blanket Limit – Real and Personal Property: \$10,000,000

All Risk Of Direct Physical Loss Or Damage To Personal Property On A Replacement Cost Basis, Subject To Policy Terms, Conditions And Exclusions.

Other deductibles may apply as per policy terms and conditions.



54 *DM*

FEB 24 2016

STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
 27 Hazen Dr., Concord, NH 03301
 Fax: 603-271-1516 TDD Access: 1-800-735-2964
 www.nh.gov/doit

Denis Goulet
Commissioner

February 16, 2016

Her Excellency, Governor Margaret Wood Hassan
 and the Honorable Executive Council
 State House
 Concord, NH 03301

Sole Source

REQUESTED ACTION

Authorize the Department of Information Technology (DoIT), for the benefit of the Department of Health and Human Services (DHHS), to enter into a **Sole Source** contract with ChemWare, LLC, Raleigh, NC. (VC# 171140), in an amount not to exceed \$673,428.00 for software maintenance and support as well as other optional services effective date of Governor and Council approval through June 30, 2021.

Funds are available in the following accounts for State Fiscal Year (SFY) 2016 and 2017, and are anticipated to be available in SFY 2018, 2019, 2020, and 2021, depending on availability and continued appropriation of funds with authority to adjust encumbrances in each of the State Fiscal Years through the Budget Office if needed and justified. **100% Federal Funds.**

SFY	CAT#-DEPT#-AGENCY#-ACTIVITY#-ACCTG UNIT#- DEPT NAME-AGENCY NAME-ACCTG UNIT NAME	JOB #	AMOUNT
	CLASS CODE-ACCOUNT CODE - OBJ (ACCOUNT) DESC		
2016	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS - LIMS	03900078	\$83,228.00
2017	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS - LIMS	03900078	\$118,040.00
2018	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS - LIMS	03900078	\$118,040.00
2019	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS - LIMS	03900078	\$118,040.00
2020	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS - LIMS	03900078	\$118,040.00
2021	010-003-7695-0300 - DoIT- IT for DHHS 038-500175- Agency software DPHS - LIMS	03900078	\$118,040.00
		TOTAL	\$ 673,428.00

EXPLANATION

This is a **Sole Source** contract because no other vendor can maintain and upgrade this vendor's software, Horizon Laboratory Information Management Systems (LIMS) due to its proprietary nature. It would be cost prohibitive to competitively bid for a replacement system for Horizon, especially since Horizon has been performing to standards and meeting the business needs.

The purpose of the contract is to provide software maintenance and support for the ChemWare Horizon LIMS originally installed 2003. Optional services such as report writing may be performed as needed, and instrument interfaces will be provided. It is imperative that this software be maintained and fully operational in order to respond to disease outbreaks and other events (biological, chemical, and radiological) in order to protect citizens and visitors in the State.

The Department of Information Technology respectfully requests your approval.

Respectfully submitted,



Denis Goulet
Commissioner



STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
27 Hazen Dr., Concord, NH 03301
Fax: 603-271-1516 TDD Access: 1-800-735-2964
www.nh.gov/doi

Denis Goulet
Commissioner

February 17, 2016

Jeffrey A. Meyers, Commissioner
State of New Hampshire
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-3857

Dear Commissioner Meyers:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to enter into a contract with ChemWare, Raleigh, NC, as described below and referenced as DoIT No. 2016-021.

The purpose of this contract is to provide maintenance and support as well as other optional services for the Public Health Laboratories' (PHL) Horizon Laboratory Information Management System (LIMS). The funding amount is not to exceed \$673,428.00, and the contract shall become effective upon Governor and Council approval through June 30, 2021.

A copy of this letter should accompany the Department of Information Technology's submission to the Governor and Executive Council for approval.

Sincerely,

Denis Goulet

DG/mh
DoIT 2016-021

cc: Leslie Mason, DoIT

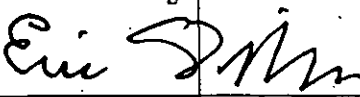
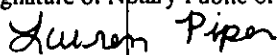

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

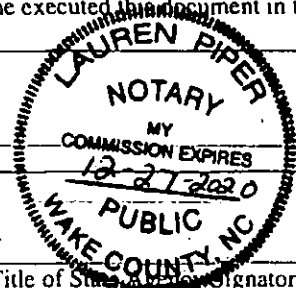
AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Information Technology		1.2 State Agency Address 27 Hazen Drive Concord, NH 03301	
1.3 Contractor Name ChemWare, LLC		1.4 Contractor Address 900 Ridgefield Drive, Suite 150 Raleigh, NC 27609	
1.5 Contractor Phone Number (919) 855-8716	1.6 Account Number 010-003-7695-0300-038-0175	1.7 Completion Date June 30, 2021	1.8 Price Limitation \$673,428
1.9 Contracting Officer for State Agency Michael O'Neal		1.10 State Agency Telephone Number (603) 230-3459	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Eric Dingfelder, General Manager	
1.13 Acknowledgement: State of <u>NC</u> , County of <u>Wake</u> On <u>Feb 10, 2016</u> , 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 			
1.13.2 Name and Title of Notary or Justice of the Peace Lauren Pifer Administrative Assistant			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Denis Goulet, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Denise M. Giguere, Attorney</u> On: <u>Feb. 24, 2016</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			



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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

Agreement. This provision shall survive termination of this Agreement.

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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

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

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

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

19. CONSTRUCTION OF AGREEMENT AND TERMS.

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

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

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

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

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

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

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHEMWARE MAINTENANCE
CONTRACT 2016-021
PART 2

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TERMS AND DEFINITIONS

The following general contracting terms and definitions apply except as specifically noted elsewhere in this document.

Acceptance	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
Acceptance Letter	An Acceptance Letter provides notice from the State that a Deliverable has satisfied Acceptance Tests or Review.
Acceptance Period	The timeframe during which the Acceptance Test is performed
Acceptance Test Plan	The Acceptance Test Plan provided by the Vendor and agreed to by the State that describes at a minimum, the specific Acceptance process, criteria, and Schedule for Deliverables.
Acceptance Test and Review	Tests performed to determine that no Defects exist in the application Software or the System
Access Control	Supports the management of permissions for logging onto a computer or network
Agreement	A contract duly executed and legally binding.
Appendix	Supplementary material that is collected and appended at the back of a document
Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system
Best and Final Offer (BAFO)	For negotiated procurements, a Vendor's final offer following the conclusion of discussions.
CCP	Change Control Procedures
Certification	The Vendor's written declaration with full supporting and written Documentation (including without limitation test results as applicable) that the Vendor has completed development of the Deliverable and certified its readiness for applicable Acceptance Testing or Review.
Change Control	Formal process for initiating changes to the proposed solution or process once development has begun.
Change Order	Formal documentation prepared for a proposed change in the Specifications.
CM	Configuration Management
Completion Date	End date for the Contract
Confidential Information	Information required to be kept Confidential from unauthorized disclosure <i>under the Contract</i>
Contract	This Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.
Contract Agreement	The documentation consisting of both the P-37 Agreement, Contract Agreement - IT Provisions, and the Exhibits which represents the understanding and acceptance of the reciprocal legal rights and duties of the parties with respect to the Scope of Work
Contract Conclusion	Refers to the conclusion of the Contract, for any reason, including

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		but not limited to, the successful Contract completion, termination for convenience, or termination for default.
Contract Documents		Documents that comprise this Contract (See Contract Agreement, Section 1.1)
Contract Managers		The persons identified by the State and the Vendor who shall be responsible for all contractual authorization and administration of the Contract. These responsibilities shall include but not be limited to processing Contract Documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. (See Section 4: <i>Contract Management</i>)
Contract Price		The total, not to exceed amount to be paid by the State to the Contractor for product and services described in the Contract Agreement. This amount is listed in the General Provisions Section 1.8 as well as Exhibit B Paragraph 2.
Contractor		The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
Contracted Vendor/Vendor		The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
Conversion Test		A test to ensure that a Data conversion process correctly takes Data from a legacy system and successfully converts it to a form that can be used by the new System.
COTS		Commercial Off-The-Shelf Software
CR		Change Request
Cure Period		The thirty (30) day period following written notification of a default within which a contracted vendor must cure the default identified.
Custom Code		Code developed by the Vendor specifically for this project for the State of New Hampshire
Custom Software		Software developed by the Vendor specifically for this project for the State of New Hampshire
Data		State's records, files, forms, Data and other documents or information, in either electronic or paper form, that will be used /converted by the Vendor during the Contract Term
DBA		Database Administrator
Deficiencies/Defects		<p>A failure, deficiency or defect in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.</p> <p>Severity 1 Deficiency – Software - Complete loss of services; application unusable or inaccessible; <i>Written Documentation</i> - missing significant portions of information or unintelligible to State; <i>Non Software</i> - Services were inadequate and require re-performance of the Service.</p> <p>Severity 2 Deficiency – Software Severely impacted use of</p>

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	application with no reasonable workaround; <i>Written Documentation</i> - portions of information are missing but not enough to make the document unintelligible; <i>Non Software</i> - Services were deficient, require reworking, but do not require re-performance of the Service. Severity 3 Deficiency – Software - Moderately impacted use of application with reasonable workaround.; <i>Written Documentation</i> - minimal changes required and of minor editing nature; <i>Non Software</i> - Services require only minor reworking and do not require re-performance of the Service.
Deliverable	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, other), provided by the Vendor to the State or under the terms of a Contract requirement.
Department	An agency of the State
Department of Information Technology (DoIT)	The Department of Information Technology established under RSA 21-R by the Legislature effective September 5, 2008.
Documentation	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
Digital Signature	Guarantees the unaltered state of a file
Effective Date	The Contract and all obligations of the parties hereunder shall become effective on the date the Governor and the Executive Council of the State of New Hampshire approves the Contract
Encryption	Supports the transformation of data for security purposes
Enhancements	Updates, additions, modifications to, and new releases for the Software, and all changes to the Documentation as a result of Enhancements, including, but not limited to, Enhancements produced by Change Orders
Firm Fixed Price Contract	A Firm-Fixed-Price Contract provides a price that is not subject to increase, i.e., adjustment on the basis of the Vendor's cost experience in performing the Contract
Fully Loaded	Rates are inclusive of all allowable expenses, including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses
GAAP	Generally Accepted Accounting Principles
Governor and Executive Council	The New Hampshire Governor and Executive Council.
Harvest	Software to archive and/or control versions of software
Identification and Authentication	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users
Implementation	The process for making the System fully operational for processing the Data.
Implementation Plan	Sets forth the transition from development of the System to full operation, and includes without limitation, training, business and technical procedures.

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Information Technology (IT)	Refers to the tools and processes used for the gathering, storing, manipulating, transmitting, sharing, and sensing of information including, but not limited to, Data processing, computing, information systems, telecommunications, and various audio and video technologies.
Input Validation	Ensure that the values entered by users or provided by other applications meets the size, type and format expected. Protecting the application from cross site scripting, SQL injection, buffer overflow, etc.
Intrusion Detection	Supports the detection of illegal entrance into a computer system
Invoking Party	In a dispute, the party believing itself aggrieved
Key Project Staff	Personnel identified by the State and by ChemWare as essential to work on the Project.
Licensee	The State of New Hampshire
Non Exclusive Contract	A contract executed by the State that does not restrict the State from seeking alternative sources for the Deliverables or Services provided under the Contract.
Non-Software Deliverables	Deliverables that are not Software Deliverables or Written Deliverables, e.g., meetings, help support, services, other
Normal Business Hours	Normal Business Hours – 8:00 a.m. to 5:00 p.m. EST, Monday through Friday excluding State of New Hampshire holidays. State holidays are: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, July 4 th , Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day. Specific dates will be provided
Notice to Proceed (NTP)	The State Contract Manager's written direction to the Vendor to begin work on the Contract on a given date and time
Open Data Formats	A data format based on an underlying Open Standard.
Open Source Software	Software that guarantees the user unrestricted use of the Software as defined in RSA 21-R:10 and RSA 21-R:11.
Open Standards	Specifications for the encoding and transfer of computer data that is defined in RSA 21-R:10 and RSA 21-R:13.
Operating System	System is fully functional, all Data has been loaded into the System, is available for use by the State in its daily operations.
Operational	Operational means that the System is operating and fully functional, all Data has been loaded; the System is available for use by the State in its daily operations, and the State has issued an Acceptance Letter.
Order of Precedence	The order in which Contract/Documents control in the event of a conflict or ambiguity. A term or condition in a document controls over a conflicting or ambiguous term or condition in a document that is lower in the Order of Precedence
Project	The planned undertaking regarding the entire subject matter of an RFP and Contract and the activities of the parties related hereto.
Project Team	The group of State employees and contracted Vendor's personnel responsible for managing the processes and mechanisms required

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		such that the Services are procured in accordance with the Work Plan on time, on budget and to the required specifications and quality
Project Management Plan		A document that describes the processes and methodology to be employed by the Vendor to ensure a successful Project.
Project Managers		The persons identified who shall function as the State's and the Vendor's representative with regard to Review and Acceptance of Contract Deliverables, invoice sign off, and review and approval of Change Requests (CR) utilizing the Change Control Procedures (CCP)
Project Staff		State personnel assigned to work with the Vendor on the Project
Proposal		The submission from a Vendor in response to the Request for a Proposal or Statement of Work
Regression Test Plan		A plan integrated into the Work Plan used to ascertain whether fixes to Defects have caused errors elsewhere in the application/process.
Review		The process of reviewing Deliverables for Acceptance
Review Period		The period set for review of a Deliverable. If none is specified then the Review Period is five (5) business days.
RFP (Request for Proposal)		A Request For Proposal solicits Proposals to satisfy State functional requirements by supplying data processing product and/or Service resources according to specific terms and conditions
Role/Privilege Management		Supports the granting of abilities to users or groups of users of a computer, application or network
SaaS- Software as a Service		Occurs where the COTS application is hosted but the State does not own the license or the code. The vendor allows the use of the software as a part of their service.
Schedule		The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities under the Contract
Service Level Agreement (SLA)		A signed agreement between the Vendor and the State specifying the level of Service that is expected of, and provided by, the Vendor during the term of the Contract.
Services		The work or labor to be performed by the Vendor on the Project as described in the Contract.
Software		All custom Software and COTS Software provided by the Vendor under the Contract
Software Deliverables		COTS Software and Enhancements
Software License		Licenses provided to the State under this Contract
Solution		The Solution consists of the total Solution, which includes, without limitation, Software and Services, addressing the requirements and terms of the Specifications. The off-the-shelf Software and configured Software customized for the State provided by the Vendor in response to this RFP.
Specifications		The written Specifications that set forth the requirements which include, without limitation, this RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and

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		federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other Specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
State		STATE is defined as: State of New Hampshire Department of Information Technology for the Benefit of The Department of Health and Human Services Public Health Laboratory 29 Hazen Drive Concord, NH 03301 Reference to the term "State" shall include applicable agencies
Statement of Work (SOW)		A Statement of Work clearly defines the basic requirements and objectives of a Project. The Statement of Work also defines a high level view of the architecture, performance and design requirements, the roles and responsibilities of the State and the Vendor. The Contract Agreement SOW defines the results that the Vendor remains responsible and accountable for achieving.
State's Confidential Records		State's information regardless of its form that is not subject to public disclosure under applicable state and federal laws and regulations, including but not limited to <u>RSA Chapter 91-A</u>
State Data		Any information contained within State systems in electronic or paper format.
State Fiscal Year (SFY)		The New Hampshire State Fiscal Year extends from July 1 st through June 30 th of the following calendar year
State Project Leader		State's representative with regard to Project oversight
State's Project Manager (PM)		State's representative with regard to Project management and technical matters. Agency Project Managers are responsible for review and Acceptance of specific Contract Deliverables, invoice sign off, and Review and approval of a Change Proposal (CP).
Subcontractor		A person, partnership, or company not in the employment of, or owned by, the Vendor, which is performing Services under this Contract under a separate Contract with or on behalf of the Vendor
System		All Software, specified hardware, and interfaces and extensions, integrated and functioning together in accordance with the Specifications.
TBD		To Be Determined
Technical Authorization		Direction to a Vendor, which fills in details, clarifies, interprets, or specifies technical requirements. It must be: (1) consistent with Statement of Work within statement of Services; (2) not constitute a new assignment; and (3) not change the terms, documents of specifications of the Contract Agreement
Test Plan		A plan, integrated in the Work Plan, to verify the code (new or changed) works to fulfill the requirements of the Project. It may consist of a timeline, a series of tests and test data, test scripts

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		and reports for the test results as well as a tracking mechanism.
Term		Period of the Contract from the Effective Date through termination.
Transition Services		Services and support provided when ChemWare is supporting System changes.
UAT		User Acceptance Test
Unit Test		Developers create their own test data and test scenarios to verify the code they have created or changed functions properly as defined.
User Acceptance Testing		Tests done by knowledgeable business users who are familiar with the scope of the Project. They create/develop test cases to confirm the System was developed according to specific user requirements. The test cases and scripts/scenarios should be mapped to business requirements outlined in the user requirements documents.
User Management		Supports the administration of computer, application and network accounts within an organization
Vendor/ Contracted Vendor		The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
Verification		Supports the confirmation of authority to enter a computer system, application or network
Walk Through		A step-by-step review of a Specification, usability features or design before it is handed off to the technical team for development
Warranty Period		A period of coverage during which ChemWare is responsible for providing a guarantee for products and Services delivered as defined in the Contract.
Warranty Releases		Code releases that are done during the Warranty Period.
Warranty Services		The Services to be provided by the Vendor during the Warranty Period.
Work Hours		Vendor personnel shall work normal business hours between 8:00 am and 5:00 pm, eight (8) hour days, forty (40) hour weeks, excluding State of New Hampshire holidays. Changes to this schedule may be made upon agreement with the State Project Manager.
Work Plan		The overall plan of activities for the Project created in accordance with the Contract. The plan and delineation of tasks, activities and events to be performed and Deliverables to be produced under the Project as specified in Appendix C. The Work Plan shall include a detailed description of the Schedule, tasks/activities, Deliverables, critical events, task dependencies, and the resources that would lead and/or participate on each task.
Written Deliverables		Non-Software written deliverable Documentation (letter, report, manual, book, other) provided by the Vendor either in paper or electronic format.

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INTRODUCTION

This Contract is by and between the State of New Hampshire, acting through the Department of Information Technology for the benefit of New Hampshire Department of Health and Human Services ("State"), and ChemWare, LLC, a North Carolina Corporation, "ChemWare" having its principal place of business at 900 Ridgefield Drive, Suite 150, Raleigh, NC 27609.

To provide software maintenance and support, as well as other optional services (report writing, instrument interfaces, etc.) for the Laboratory Information Management System (LIMS).

RECITALS

The State desires to have ChemWare provide maintenance and support of LIMS and associated Services for the State;

ChemWare wishes to provide maintenance and support of LIMS and associated Services.

The parties therefore agree as follows:

1. CONTRACT DOCUMENTS

1.1 CONTRACT DOCUMENTS

This Contract Agreement (2016-021) is comprised of the following documents:

- A. Part 1 - Form P-37 General Provision
- B. Part 2 - Information Technology Provisions
- C. Part 3 - Exhibits
 - Exhibit A- Contract Deliverables
 - Exhibit B- Price and Payment Schedule
 - Exhibit C- Special Provisions
 - Exhibit D- Administrative Services
 - Exhibit E- Implementation Services
 - Exhibit F- Testing Services
 - Exhibit G- Maintenance and Support Services
 - Exhibit H- Requirements
 - Exhibit I- Work Plan
 - Exhibit J- Software License and Related Terms
 - Exhibit K- Warranty and Warranty Services
 - Exhibit L- Certificates and Attachments

1.2 ORDER OF PRECEDENCE

In the event of conflict or ambiguity among any of the text of the Contract Documents, the following Order of Precedence shall govern:

- a. The State of New Hampshire Terms and Conditions, Form P-37 – Part 1
- b. State of New Hampshire Contract Agreement 2016-021 (Part 2 & 3)

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2. CONTRACT TERM

The Contract and all obligations of the parties hereunder shall become effective after full execution by the parties, and the receipt of required governmental approvals, including, but not limited to, Governor and Executive Council of the State of New Hampshire approval ("Effective Date").

The Contract shall begin on the Effective Date and extend through June 30, 2021. The Term may be extended to June 30, 2025, ("Extended Term") at the sole option of the State, subject to the parties prior written agreement on applicable fees for each extended term.

ChemWare shall commence work upon issuance of a Notice to Proceed by the State.

Time is of the essence in the performance of ChemWare's obligation under the contract.

3. COMPENSATION

3.1 CONTRACT PRICE

The Contract Price, Part 1, P37, block 1.8 price limitation, method of payment, and terms of payment are identified and more particularly described in section 5 of P-37 Agreement and Part 3 Contract Exhibit B: *Price and Payment Schedule*.

3.2 NON-EXCLUSIVE CONTRACT

The State reserves the right, at its discretion, to retain other vendors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal. ChemWare shall not be responsible for any delay, act, or omission of such other vendors, except that ChemWare shall be responsible for any delay, act, or omission of the other vendors if such delay, act, or omission is caused by or due to the fault of ChemWare.

4. CONTRACT MANAGEMENT

The Project will require the coordinated efforts of a Project Team consisting of both ChemWare and State personnel. ChemWare shall provide all necessary resources to perform its obligations under the Contract. ChemWare shall be responsible for managing the Project to its successful completion.

4.1 THE CONTRACTOR'S CONTRACT MANAGER

ChemWare shall assign a Contract Manager who shall be responsible for all Contract authorization and administration. ChemWare's Contract Manager is:

Christopher T. Couch
Director, Business Development
900 Ridgefield Drive, Suite 150
Raleigh, North Carolina 27609
Tel: (919) 896-7740
Email: ccouch@chemware.com

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4.2 THE VENDOR'S PROJECT MANAGER

4.2.1 Contract Project Manager

ChemWare shall assign a Project Manager who meets the requirements of the Contract. ChemWare's selection of the Contracted Vendor Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed ChemWare Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of ChemWare's Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction.

4.2.2 ChemWare Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions under the Contract, and shall function as ChemWare's representative for all administrative and management matters. ChemWare's Project Manager shall perform the duties required under the Contract, including, but not limited to, those set forth in Exhibit I, Section 2. ChemWare's Project Manager must be available to promptly respond during Normal Business Hours within two (2) hours to inquiries from the State, and be at the site as needed. ChemWare's Project Manager must work diligently and use his/ her best efforts on the Project.

4.2.3 ChemWare shall not change its assignment of ChemWare Project Manager without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of ChemWare's Project Manager shall not be unreasonably withheld. The replacement Project Manager shall have comparable or greater skills than ChemWare Project Manager being replaced; meet the requirements of the Contract; and be subject to reference and background checks described above in General Provisions, Section 4.2.1: ~~Contract-Project-Manager, and in Contract Agreement-General Provisions,~~ Section 4.6: *Reference and Background Checks*, below. ChemWare shall assign a replacement ChemWare Project Manager within ten (10) business days of the departure of the prior ChemWare Project Manager, and ChemWare shall continue during the ten (10) business day period to provide competent Project management Services through the assignment of a qualified interim ChemWare Project Manager.

4.2.4 Notwithstanding any other provision of the Contract, the State shall have the option, at its discretion, to terminate the Contract, declare ChemWare in default and pursue its remedies at law and in equity, if ChemWare fails to assign a ChemWare Project Manager meeting the requirements and terms of the Contract.

4.2.5 ChemWare Project Manager is:
Jennifer Stearns
Project Manager
900 Ridgefield Drive, Suite 150
Raleigh, NC 27609

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Tel: 919.896.7709
Email: jstearns@chemware.com

4.3 ChemWare KEY PROJECT STAFF

- 4.3.1 ChemWare shall assign Key Project Staff who meet the requirements of the Contract, and can implement the Software Solution meeting the requirements set forth in RFP Appendix C: *System Requirements and Deliverables*, Table C.2: *System Requirements and Deliverables-Vendor Response Checklist*. The State may conduct reference and background checks on ChemWare Key Project Staff. The State reserves the right to require removal or reassignment of ChemWare's Key Project Staff who are found unacceptable to the State. Any background checks shall be performed in accordance with General Provisions Section 4.6: *Background Checks*.
- 4.3.2 ChemWare shall not change any ChemWare Key Project Staff commitments without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of ChemWare Key Project Staff will not be unreasonably withheld. The replacement ChemWare Key Project Staff shall have comparable or greater skills than ChemWare Key Project Staff being replaced; meet the requirements of the Contract, including but not limited to the requirements set forth in RFP Appendix C: *System Requirements and Deliverables* and be subject to reference and background checks described in Contract Agreement- General Provisions, Section 4.6: *Reference and Background Checks*,
- 4.3.3 Notwithstanding any other provision of the Contract to the contrary, the State shall have the option to terminate the Contract, declare ChemWare in default and to pursue its remedies at law and in equity, if ChemWare fails to assign Key Project Staff meeting the requirements and terms of the Contract or if it is dissatisfied with ChemWare's replacement Project staff.

4.4 STATE CONTRACT MANAGER

The State shall assign a Contract Manager who shall function as the State's representative with regard to Contract administration. The State Contract Manager is:

Mary Holliday
Finance Administrator
29 Hazen Drive
Concord, NH 03301
Tel: 603-271-4450
Email: mholliday@dhhs.state.nh.us

4.5 STATE PROJECT MANAGER

The State shall assign a Project Manager. The State Project Manager's duties shall include the following:

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- a. Leading the Project;
- b. Engaging and managing all ChemWares;
- c. Managing significant issues and risks.
- d. Reviewing and accepting Contract Deliverables;
- e. Invoice sign-offs;
- f. Review and approval of change proposals; and
- g. Managing stakeholders' concerns.

The State Project Manager is:

Jonathan Lester
LIMS Administrator
29 Hazen Drive
Concord, NH 03301
Tel: 603 217-4617
Email: jonathan.lester@dhhs.state.nh.us

4.6 REFERENCE AND BACKGROUND CHECKS

The State may, at its sole expense, conduct reference and background screening of the Contracted Vendor Project Manager and ChemWare Key Project Staff. The State shall maintain the confidentiality of background screening results in accordance with the Contract Agreement – General Provisions-Section 11: *Use of State's Information, Confidentiality*.

5. DELIVERABLES

5.1 CONTRACTOR RESPONSIBILITIES

ChemWare shall be solely responsible for meeting all requirements, and terms and conditions specified in this Contract, regardless of whether or not a subcontractor is used.

ChemWare may subcontract Services subject to the provisions of the Contract, including but not limited to, the terms and conditions in the Contract Agreement. ChemWare must submit all information and documentation relating to the Subcontractor, including terms and conditions consistent with this Contract. The State will consider ChemWare to be wholly responsible for the performance of the Contract and the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

5.2 DELIVERABLES AND SERVICES

ChemWare shall provide the State with the Deliverables and Services in accordance with the time frames in the Work Plan for this Contract, and as more particularly described in Contract Exhibit A: *Contract Deliverables*. Upon its submission of a Deliverable or Service, the Contracted Vendor represents that it has performed its obligations under the Contract associated with the Deliverable or Services.

5.3 NON-SOFTWARE AND WRITTEN DELIVERABLES REVIEW AND ACCEPTANCE

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After receiving written Certification from ChemWare that a Non-Software or Written Deliverable is final, complete, and ready for Review, the State will Review the Deliverable to determine whether it meets the Requirements outlined in Contract Exhibit A: *Contract Deliverables*. The State will notify ChemWare in writing of its Acceptance or rejection of the Deliverable within five (5) business days of the State's receipt of ChemWare's written Certification. If the State rejects the Deliverable, the State shall notify ChemWare of the nature and class of the Deficiency and ChemWare shall correct the Deficiency within the period identified in the Work Plan. If no period for ChemWare's correction of the Deliverable is identified, ChemWare shall correct the Deficiency in the Deliverable within five (5) business days. Upon receipt of the corrected Deliverable, the State shall have five (5) business days to review the Deliverable and notify ChemWare of its Acceptance or rejection thereof, with the option to extend the Review Period up to five (5) additional business days. If ChemWare fails to correct the Deficiency within the allotted period of time, the State may, at its option, continue reviewing the Deliverable and require ChemWare to continue until the Deficiency is corrected, or immediately terminate the Contract, declare ChemWare in default, and pursue its remedies at law and in equity.

5.4 SOFTWARE AND DELIVERABLES REVIEW AND ACCEPTANCE

Software Testing and Acceptance shall be performed as set forth in the Test Plan and more particularly described in Exhibit F: *Testing Services*.

6. SOFTWARE

ChemWare shall provide the State with Software Licenses and Documentation set forth in the Contract, and particularly described in Exhibit J: *Software License and Related Terms*.

7. SERVICES

ChemWare shall provide the Services required under the Contract Documents. All Services shall meet, and be performed, in accordance with the Specifications.

7.1 ADMINISTRATIVE SERVICES

ChemWare shall provide the State with the administrative Services set forth in the Contract, and particularly described in Exhibit D: *Administrative Services*.

7.2 IMPLEMENTATION SERVICES

ChemWare shall provide the State with the Implementation Services set forth in the Contract, and particularly described in Exhibit E: *Implementation Services*.

7.3 TESTING SERVICES

ChemWare shall perform testing Services for the State set forth in the Contract, and particularly described in Exhibit F: *Testing Services*.

7.4 TRAINING SERVICES

ChemWare shall provide the State with training Services set forth in the Contract, and particularly described in Exhibit L: *Training Services*.

7.5 MAINTENANCE AND SUPPORT SERVICES

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ChemWare shall provide the State with Maintenance and support Services for the Software set forth in the Contract, and particularly described in Exhibit G: System Maintenance and Support.

7.6 WARRANTY SERVICES

ChemWare shall provide the State with warranty Services set forth in the Contract, and particularly described in Exhibit K: Warranty Services.

8. WORK PLAN DELIVERABLE

ChemWare shall provide the State with a Work Plan that shall include, without limitation, a detailed description of the Schedule, tasks, Deliverables, major milestones, task dependencies, and payment Schedule.

The initial Work Plan shall be a separate Deliverable and is set forth in Contract Exhibit I: *Work Plan*. ChemWare shall update the Work Plan as necessary, but no less than every two weeks, to accurately reflect the status of the Project, including without limitation, the Schedule, tasks, Deliverables, major milestones, task dependencies, and payment Schedule. Any such updates to the Work Plan must be approved by the State, in writing, prior to final incorporation into Contract Exhibit I: *Work Plan*. The updated Contract Exhibit I: *Work Plan*, as approved by the State, is incorporated herein by reference.

Unless otherwise agreed in writing by the State, changes to the Contract Exhibit I: *Work Plan* shall not relieve ChemWare from liability to the State for damages resulting from ChemWare's failure to perform its obligations under the Contract, including, without limitation, performance in accordance with the Schedule.

In the event of any delay in the Schedule, ChemWare must immediately notify the State in writing, identifying the nature of the delay, i.e., specific actions or inactions of ChemWare or the State causing the problem; its estimated duration period to reconciliation; specific actions that need to be taken to correct the problem; and the expected Schedule impact on the Project.

In the event additional time is required by ChemWare to correct Deficiencies, the Schedule shall not change unless previously agreed in writing by the State, except that the Schedule shall automatically extend on a day-to-day basis to the extent that the delay does not result from ChemWare's failure to fulfill its obligations under the Contract. To the extent that the State's execution of its major tasks takes longer than described in the Work Plan, the Schedule shall automatically extend on a day-to-day basis.

Notwithstanding anything to the contrary, the State shall have the option to terminate the Contract for default, at its discretion, if it is dissatisfied with the Vendor's Work Plan or elements within the Work Plan.

9. CHANGE ORDERS

The State may make changes or revisions at any time by written Change Order. The State originated changes or revisions shall be approved by the Department of Information Technology. Within five (5) business days of ChemWare's receipt of a Change Order, ChemWare shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, or the Work Plan.

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ChemWare may request a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, or the Work Plan. The State shall attempt to respond to ChemWare's requested Change Order within five (5) business days. The State Agency, as well as the Department of Information Technology, must approve all Change Orders in writing. The State shall be deemed to have rejected the Change Order if the parties are unable to reach an agreement in writing.

All Change Order requests from ChemWare to the State, and the State acceptance of ChemWare's estimate for a State requested change, will be acknowledged and responded to, either acceptance or rejection, in writing. If accepted, the Change Order(s) shall be subject to the Contract amendment process, as determined to apply by the State.

10. INTELLECTUAL PROPERTY

10.1 SOFTWARE TITLE

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with Chemware

Upon successful completion and/or termination of the Implementation of the Project, Chemware shall own and hold all, title, and rights in any Software modifications developed in connection with performance of obligations under the Contract, or modifications to Chemware provided Software, and their associated Documentation including any and all performance enhancing operational plans and the Vendors' special utilities. Chemware shall license back to the State the right to produce, publish, or otherwise use such software, source code, object code, modifications, reports, and Documentation developed under the Contract.

In no event shall the Vendor be precluded from developing for itself, or for others, materials that are competitive with, or similar to Custom Software, modifications developed in connection with performance of obligations under the Contract. In addition, the Vendor shall be free to use its general knowledge, skills, experience, and any other ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this agreement.

10.2 STATE'S DATA AND PROPERTY

All rights, title and interest in State Data shall remain with the State. 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 CONTRACTOR'S MATERIALS

Subject to the provisions of this Contract, ChemWare may develop for itself, or for others, materials that are competitive with, or similar to, the Deliverables. In accordance with the provision of this Contract, ChemWare shall not distribute any products containing or disclose any

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State Confidential Information. ChemWare shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this Contract, provided that such is not obtained as the result of the deliberate memorization of the State Confidential Information by ChemWare employees or third party consultants engaged by ChemWare.

Without limiting the foregoing, the parties agree that the general knowledge referred to herein cannot include information or records not subject to public disclosure under New Hampshire RSA Chapter 91-A, which includes but is not limited to the following: records of grand juries and petit juries; records of parole and pardon boards; personal school records of pupils; records pertaining to internal personnel practices, financial information, test questions, scoring keys and other examination data use to administer a licensing examination, examination for employment, or academic examination and personnel, medical, welfare, library use, video tape sale or rental, and other files containing personally identifiable information that is private in nature.

10.4 STATE WEBSITE COPYRIGHT

WWW Copyright and Intellectual Property Rights

All right, title and interest in the State WWW site, including copyright to all Data and information, shall remain with the State. The State shall also retain all right, title and interest in any user interfaces and computer instructions embedded within the WWW pages. All WWW pages and any other Data or information shall, where applicable, display the State's copyright.

10.5 CUSTOM SOFTWARE SOURCE CODE

ChemWare shall provide the State with a copy of the source code for the Custom Software, which shall be subject to the License rights. The State shall receive a worldwide, perpetual, irrevocable, non-exclusive paid -up right and license to use, copy, modify and prepare derivative works of any custom developed software.

10.6 SURVIVAL

This Contract Agreement Section 10: *Intellectual Property* shall survive the termination of the Contract.

11. USE OF STATE'S INFORMATION, CONFIDENTIALITY

11.1 USE OF STATE'S INFORMATION

In performing its obligations under the Contract, ChemWare may gain access to information of the State, including State Confidential Information. "State Confidential Information" shall include, but not be limited to, information exempted from public disclosure under New Hampshire RSA Chapter 91-A: *Access to Public Records and Meetings* (see e.g. RSA Chapter 91-A: 5 *Exemptions*). ChemWare shall not use the State Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Contract, except as directly connected to and necessary for ChemWare's performance under the Contract.

11.2 STATE CONFIDENTIAL INFORMATION

ChemWare shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all State Confidential

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Information that becomes available to ChemWare in connection with its performance under the Contract, regardless of its form.

Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof; (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or (iv) is disclosed with the written consent of the disclosing party. A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction.

Any disclosure of the State Confidential Information shall require the prior written approval of the State. ChemWare shall immediately notify the State if any request, subpoena or other legal process is served upon ChemWare regarding the State Confidential Information, and ChemWare shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process.

In the event of the unauthorized release of State Confidential Information, ChemWare shall immediately notify the State, and the State may immediately be entitled to pursue any remedy at law and in equity, including, but not limited to, injunctive relief.

11.3 CONTRACTOR CONFIDENTIAL INFORMATION

Insofar as ChemWare seeks to maintain the confidentiality of its confidential or proprietary information, ChemWare must clearly identify in writing all information it claims to be confidential or proprietary. Notwithstanding the foregoing, the State acknowledges that ChemWare considers the Software and Documentation to be Confidential Information. ChemWare acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. The State shall maintain the confidentiality of the identified Confidential Information insofar as it is consistent with applicable State and federal laws or regulations, including but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by ChemWare as confidential, the State shall notify ChemWare and specify the date the State will be releasing the requested information. At the request of the State, ChemWare shall cooperate and assist the State with the collection and review of ChemWare's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be ChemWare's sole responsibility and at ChemWare's sole expense. If ChemWare fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to ChemWare, without any liability to ChemWare.

11.4 SURVIVAL

This Contract Agreement Section 11, *Use of State's Information, Confidentiality*, shall survive termination or conclusion of the Contract.

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12. LIMITATION OF LIABILITY

12.1 STATE

Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. Subject to applicable laws and regulations, the State's liability to ChemWare shall not exceed the total Contract price set forth in Contract Agreement – General Provisions, Block 1.8.

12.2 ChemWare

Subject to applicable laws and regulations, in no event shall ChemWare be liable for any consequential, special, indirect, incidental, punitive or exemplary damages and ChemWare's liability to the State shall not exceed two times (2X) the total Contract price set forth in Contract Agreement – P-37, General Provisions, Block 1.8.

Notwithstanding the foregoing, this limitation of liability shall not apply to ChemWare's indemnification obligations set forth in the Contract Agreement-General Provisions Section 13: *Indemnification* and confidentiality obligations in Contract Agreement-General Provisions Section 11: *Use of State's Information, Confidentiality*, which shall be unlimited.

12.3 STATE'S IMMUNITY

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 shall survive termination or Contract conclusion.

12.4 SURVIVAL

This Section 12: *Limitation of Liability* shall survive termination or Contract conclusion.

13. TERMINATION

This Section 13 shall survive the termination or Contract Conclusion.

13.1 TERMINATION FOR DEFAULT

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

- a. Failure to perform the Services satisfactorily or on schedule;
- b. Failure to submit any report required; and/or
- c. Failure to perform any other covenant, term or condition of the Contract

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

- a. Unless otherwise provided in the Contract, the State shall provide ChemWare written notice of default and require it to be remedied within, in the absence of a greater or lesser specification of time, within thirty (30) days from the date of notice, unless otherwise indicated within by the State ("Cure Period"). If ChemWare fails to cure the default within the Cure Period, the State may

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terminate the Contract effective two (2) days after giving ChemWare notice of termination, at its sole discretion, treat the Contract as breached and pursue its remedies at law or in equity or both.

- b. Give ChemWare a written notice specifying the Event of Default and suspending all payments to be made under the Contract and ordering that the portion of the Contract price which would otherwise accrue to ChemWare during the period from the date of such notice until such time as the State determines that ChemWare has cured the Event of Default shall never be paid to ChemWare.
- c. Set off against any other obligations the State may owe to the Vendor any damages the State suffers by reason of any Event of Default;
- d. Treat the Contract as breached and pursue any of its remedies at law or in equity, or both.

13.1.2 The Vendor shall provide the State with written notice of default, and the State shall cure the default within thirty (30) days.

13.2 TERMINATION FOR CONVENIENCE

13.2.1 The State may, at its sole discretion, terminate the Contract for convenience, in whole or in part, by thirty (30) days written notice to ChemWare. In the event of a termination for convenience, the State shall pay ChemWare the agreed upon price, if separately stated in this Contract, for Deliverables for which Acceptance has been given by the State. Amounts for Services or Deliverables provided prior to the date of termination for which no separate price is stated under the Contract shall be paid, in whole or in part, generally in accordance with Contract Exhibit B, *Price and Payment Schedule*, of the Contract.

13.2.2 During the thirty (30) day period, ChemWare shall wind down and cease Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the State from such winding down and cessation of Services.

13.3 TERMINATION FOR CONFLICT OF INTEREST

13.3.1 The State may terminate the Contract by written notice if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of Contracts.

In such case, the State shall be entitled to a pro-rated refund of any current development, support, and maintenance costs. The State shall pay all other contracted payments that would have become due and payable if ChemWare did not know, or reasonably did not know, of the conflict of interest.

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13.3.2 In the event the Contract is terminated as provided above pursuant to a violation by ChemWare, the State shall be entitled to pursue the same remedies against ChemWare as it could pursue in the event of a default of the Contract by ChemWare.

13.4 TERMINATION PROCEDURE

13.4.1 Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require ChemWare to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.

13.4.2 After receipt of a notice of termination, and except as otherwise directed by the State, ChemWare shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Promptly, but in no event longer than thirty (30) days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
- c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of ChemWare and in which the State has an interest;
- d. Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State; and
- e. Provide written Certification to the State that ChemWare has surrendered to the State all said property.
- f. Assist in Transition Services, as reasonably requested by the State at no additional cost.

14: CHANGE OF OWNERSHIP

In the event that ChemWare should change ownership for any reason whatsoever, the State shall have the option of continuing under the Contract with ChemWare, its successors or assigns for the full remaining term of the Contract; continuing under the Contract with ChemWare, its successors or assigns for such period of time as determined necessary by the State; or immediately terminate the Contract without liability to ChemWare, its successors or assigns.

15. ASSIGNMENT, DELEGATION AND SUBCONTRACTS

15.1 ChemWare shall not assign, delegate, subcontract, or otherwise transfer any of its interest, rights, or duties under the Contract without the prior written consent of the State. Such consent shall not be unreasonably withheld. Any attempted transfer, assignment, delegation, or other transfer made

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without the State's prior written consent shall be null and void, and may constitute an event of default at the sole discretion of the State.

15.2 ChemWare shall remain wholly responsible for performance of the entire Contract even if assignees, delegates, Subcontractors, or other transferees ("Assigns") are used, unless otherwise agreed to in writing by the State, and the Assigns fully assumes in writing any and all obligations and liabilities under the Contract from the Effective Date. In the absence of a written assumption of full obligations and liabilities of the Contract, any permitted assignment, delegation, subcontract, or other transfer shall neither relieve ChemWare of any of its obligations under the Contract nor affect any remedies available to the State against ChemWare that may arise from any event of default of the provisions of the contract. The State shall consider ChemWare to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

15.3 Notwithstanding the foregoing, nothing herein shall prohibit ChemWare from assigning the Contract to the successor of all or substantially all of the assets or business of ChemWare provided that the successor fully assumes in writing all obligations and responsibilities under the Contract. In the event that ChemWare should change ownership, as permitted under Section 15: *Change of Ownership*, the State shall have the option to continue under the Contract with ChemWare, its successors or assigns for the full remaining term of the Contract; continue under the Contract with ChemWare, its successors or assigns for such period of time as determined necessary by the State; or immediately terminating the Contract without liability to ChemWare, its successors or assigns.

16. DISPUTE RESOLUTION

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights or Confidential Information), the party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted under the Contract.

The parties shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Dispute Resolution Responsibility and Schedule Table

LEVEL	ChemWare	STATE	<u>CUMULATIVE ALLOTTED TIME</u>
Primary	Jennifer Stearns Project Manager	Jonathan Lester State Project Manager (PM)	5 Business Days
First	Chris Couch Director, Business Development	Christine Bean Director	10 Business Days

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Second	Eric Dingfelder General Manager	Nicholas Toumpas Commissioner	15 Business Days
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The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other party.

17. REQUIRED WORK PROCEDURES

All work done must conform to standards and procedures established by the Department of Information Technology and the State.

17.1 COMPUTER USE

In consideration for receiving access to and use of the computer facilities, network, licensed or developed software, software maintained or operated by any of the State entities, systems, equipment, Documentation, information, reports, or data of any kind (hereinafter "Information"), ChemWare understands and agrees to the following rules:

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall ChemWare access or attempt to access any information without having the express authority to do so.
- c. That at no time shall ChemWare access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and/or agreements relating to system entry/access.
- d. That all software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times ChemWare must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other Agreement executed by the State. Only equipment or software owned, licensed, or being evaluated by the State, can be used by ChemWare. Personal software (including but not limited to palmtop sync software) shall not be installed on any equipment.
- e. That if ChemWare is found to be in violation of any of the above-stated rules, the User may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.

17.2 EMAIL USE

Mail and other electronic communication messaging systems are State of New Hampshire property and are to be used for business purposes only. Email is defined as

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"internal Email systems" or "State-funded Email systems." ChemWare understand and agree that use of email shall follow State standard policy (available upon request).

17.3 INTERNET/INTRANET USE

The Internet/Intranet is to be used for access to and distribution of information in direct support of the business of the State of New Hampshire according to State standard policy (available upon request).

17.4 REGULATORY GOVERNMENT APPROVALS

ChemWare shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Contract.

17.5 INSURANCE CERTIFICATE

The Insurance Certificate should note the Certificate Holder in the lower left hand block including State of New Hampshire, Department Name, name of the individual responsible for the funding of the contracts and his/her address.

17.6 EXHIBITS

The Exhibits referred to, in and attached to the Contract are incorporated by reference as if fully included in the text.

17.7 VENUE AND JURISDICTION

Any action on the Contract may only be brought in the State of New Hampshire, Merrimack County Superior Court.

17.8 SURVIVAL

The terms, conditions and warranties contained in the Contract that by their context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive, including, but not limited to, the terms of the Exhibit E Section 3: Records Retention and Access Requirements, Exhibit E Section 4: Accounting Requirements, and General Provisions-Section 11: Use of State's Information, Confidentiality and General Provisions- Section 14: Termination which shall all survive the termination of the Contract.

17.9 FORCE MAJEURE

Neither ChemWare nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

Except in the event of the foregoing, Force Majeure events shall not include ChemWare's inability to hire or provide personnel needed for ChemWare's performance under the Contract.

17.10 NOTICES

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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 following addresses.

TO CHEMWARE:
CHEMWARE, LLC
900 RIDGEFIELD DRIVE, SUITE 150
RALEIGH, NC 27609
TEL: (919) 855-8716

TO STATE:
STATE OF NEW HAMPSHIRE
HEALTH AND HUMAN SERVICES
29 HAZEN DRIVE
CONCORD, NH 03301
TEL: (603) 271-4617

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EXHIBIT A
DELIVERABLES**

1. DELIVERABLES, MILESTONES AND ACTIVITIES

Project Overview

The general scope of the project is to provide maintenance services for the ChemWare Horizon Laboratory Information Management System (LIMS) originally installed in 2003. Optional services such as report writing may be performed as needed, larger projects such as equipment interfaces will require Department of Information Technology approval.

General Project Assumptions

1. ChemWare shall ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of the State's Information Technology resources, information, and services. ChemWare shall provide the State resources, information, and Services on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and to safeguard the confidentiality and integrity of State networks, Systems and Data.
2. The Deliverables are set forth in the Schedule described below in Section 2. By unconditionally accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through completion of all Acceptance Testing, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.

Pricing for Deliverables set forth in Exhibit B: *Price and Payment Schedule*. Pricing will be effective for the Term of this Contract, and any extensions thereof.

2. DELIVERABLES, MILESTONES, AND ACTIVITIES SCHEDULE

Ref #	Deliverable	Deliverable Type
	CONTRACT YEAR 1 MAINTENANCE, SUPPORT AND ENHANCEMENTS (1/1/2016 - 6/30/2016)	
CY1- 1.0	Maintenance and Support	
CY1-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY1-2.0	Optional	
CY1-2.1	LIMS Upgrade to Horizon v11.1	Non-software
	CONTRACT YEAR 2 MAINTENANCE, SUPPORT	

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	AND ENHANCEMENTS (7/1/2016 - 6/30/2017)	
CY2-1.0	Maintenance and Support	
CY2-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY2-2.0	Optional	
CY2-2.1	Optional Enhancements	
	CONTRACT YEAR 3 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2017- 6/30/2018)	
CY3-1.0	Maintenance and Support	
CY3-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY3-2.0	Optional	
CY3-2.1	Optional Enhancements	
	CONTRACT YEAR 4 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2018 - 6/30/2019)	
CY4-1.0	Maintenance and Support	
CY4-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY4-2.0	Optional	
CY4-2.1	Optional Enhancements	
	CONTRACT YEAR 5 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2019 - 6/30/2020)	
CY5-1.0	Maintenance and Support	
CY5-1.1	Annual maintenance and support for Horizon and Oracle	Non-software

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CY5-2.0	Optional	
CY5-2.1	Optional Enhancements	
	CONTRACT YEAR 6 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2020 - 6/30/2021)	
CY6-1.0	Maintenance and Support	
CY6-1.1	Annual maintenance and support for Horizon and Oracle	Non-software
CY6-2.0	Optional	
CY6-2.1	Optional Enhancements	

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EXHIBIT B
PRICE AND PAYMENT SCHECULE**

1. PAYMENT SCHEDULE

1.1 Firm Fixed Price

This is a Firm Fixed Price, not to exceed \$673,428, Maintenance and Optional Services Contract for the period between the Effective Date through 6/30/2021. ChemWare shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow ChemWare to invoice the State for the following activities, Deliverables, or milestones at fixed pricing/rates appearing in the price and payment tables below:

Ref #	Deliverable	Projected Delivery Date	Payment
	CONTRACT YEAR 1 MAINTENANCE, SUPPORT AND ENHANCEMENTS (1/1/2016 - 6/30/2016)		
CY1- 1.0	Maintenance and Support		
CY1-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$57,020
CY1-2.0	Optional		
CY1-2.1	LIMS Upgrade to Horizon v11.1	6/30/2016	\$26,208
		SUBTOTAL	\$83,228
	CONTRACT YEAR 2 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2016 - 6/30/2017)		
CY2- 1.0	Maintenance and Support		
CY2-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY2-2.0	Optional		
CY2-2.1	Optional Enhancements	6/30/2017	\$4,000
		SUBTOTAL	\$118,040
	CONTRACT YEAR 3 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2017 - 6/30/2018)		

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CY3-1.0	Maintenance and Support		
CY3-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY3-2.0	Optional		
CY3-2.1	Optional Enhancements	6/30/2018	\$4,000
		SUBTOTAL	\$118,040
	CONTRACT YEAR 4 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2018 - 6/30/2019)		
CY4-1.0	Maintenance and Support		
CY4-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY4-2.0	Optional		
CY4-2.1	Optional Enhancements	6/30/2019	\$4,000
		SUBTOTAL	\$118,040
	CONTRACT YEAR 5 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2019 - 6/30/2020)		
CY5-1.0	Maintenance and Support		
CY5-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY5-2.0	Optional		
CY5-2.1	Optional Enhancements	6/30/2020	\$4,000
		SUBTOTAL	\$118,040
	CONTRACT YEAR 6 MAINTENANCE, SUPPORT AND ENHANCEMENTS (7/1/2020 - 6/30/2021)		
CY6-1.0	Maintenance and Support		
CY6-1.1	Annual maintenance and support for Horizon and Oracle	Ongoing	\$114,040
CY6-2.0	Optional		

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CY6-2.1	Optional Enhancements	6/30/2021	\$4,000
		SUBTOTAL	\$118,040
			\$122,040

1.3 Future Vendor Rates Worksheet

The State may request additional Services from the selected Vendor and requires rates in the event that additional Service is required. The following format must be used to provide this information. "SFY" refers to State Fiscal Year. The New Hampshire State Fiscal Year runs from July 1 through June 30 of the following calendar year. Positions not identified in the Proposed Position Worksheet may be included in the Future Vendor Rates Worksheet.

Table 1.3: Future Vendor Rates Worksheet

Position Title	SFY 2016	SFY 2017	SFY 2018	SFY 2019	SFY 2020	SFY 2021
Project Manager	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour
Position #1	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour
Position #2	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour
Position #3	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour	\$168/hour

1.4 Maintenance, and Support Pricing Worksheet

Pricing must reflect the payment of maintenance through the Contract end date. Price estimate should reflect the most optimistic implementation date. Actual payments may differ from the estimate if project start date slips or if implementation takes longer as this will cause a shorter maintenance period.

Table 1.4: Maintenance, and Support Pricing Worksheet

	Contract Year 1 *	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Contract Year 6
	SFY 2016	SFY 2017	SFY 2018	SFY 2019	SFY 2020	SFY 2021
Licenses	1/1/16 - 6/30/16	7/1/16 - 6/30/17	7/1/17 - 6/30/18	7/1/18 - 6/30/19	7/1/19 - 6/30/20	7/1/20 - 6/30/21
Central-One, unlted, 4 processor	\$35,467	\$70,934	\$70,934	\$70,934	\$70,934	\$70,934
Data.Mgmt-Vision 52	\$8,760	\$17,519	\$17,519	\$17,519	\$17,519	\$17,519

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named							
Data Mgmt-File Capture, 5 devices	\$428	\$857	\$857	\$857	\$857	\$857	\$857
HDM/Extraction Template Bldr, 1 server	\$490	\$979	\$979	\$979	\$979	\$979	\$979
Data Management Web-Vision, 1	\$533	\$1,067	\$1,067	\$1,067	\$1,067	\$1,067	\$1,067
Report Manager-Actuate 2 proc	\$5,468	\$10,936	\$10,936	\$10,936	\$10,936	\$10,936	\$10,936
Statistical Analysis, NWA, 5 conc	\$883	\$1,767	\$1,767	\$1,767	\$1,767	\$1,767	\$1,767
Autofaxing, server	\$227	\$453	\$453	\$453	\$453	\$453	\$453
LimsLink with Interface, 12 instrument	\$2,473	\$4,946	\$4,946	\$4,946	\$4,946	\$4,946	\$4,946
Data Innovations, 4 instrument	\$1,196	\$2,392	\$2,392	\$2,392	\$2,392	\$2,392	\$2,392
SimpleIndex Barcode, 1 workstation	\$94	\$189	\$189	\$189	\$189	\$189	\$189
Oracle Forms Services	\$1,001	\$2,001	\$2,001	\$2,001	\$2,001	\$2,001	\$2,001
TOTAL	\$57,020	\$114,040	\$114,040	\$114,040	\$114,040	\$114,040	\$114,040
Grand Total							\$627,220
* Contract Year 1 is a 6 months period.							

1.5 OPTIONAL SERVICES

Table 1.5: Optional Services

Optional SERVICES	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Optional Services to include Horizon 10 to 11 Upgrade services	26,208.					
Optional Services such as Special reports, interfaces, desired enhancements, or additional functionality		4,000	4,000	4,000	4,000	4,000
GRAND TOTAL						\$46,208

1.6 SUMMARY - MAINTENANCE SUPPORT AND OPTIONAL SERVICES

Table 1.6: Optional Services

Service Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Totals
Maintenance and	\$57,020	\$114,040	\$114,040	\$114,040	\$114,040	\$114,040	\$627,220

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Support Services							
Optional Services	26,208.	4,000	4,000	4,000	4,000	4,000	\$46,208
TOTALS	83,228	\$118,040	\$118,040	\$118,040	\$118,040	\$118,040	
GRAND TOTAL							\$673,428

2. CONTRACT PRICE

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed \$673,428 ("Total Contract Price"). The payment by the State of the total Contract price shall be the only, and the complete reimbursement to ChemWare for all fees and expenses, of whatever nature, incurred by ChemWare in the performance hereof.

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services performed under this Contract.

3. INVOICING

ChemWare shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State's prior written approval, which shall not be unreasonably withheld. ChemWare shall only submit invoices for Services or Deliverables as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Deliverable and identification of the Deliverable for which payment is sought, and the Acceptance date triggering such payment; date of delivery and/or installation; monthly maintenance charges; any other Project costs or retention amounts if applicable. ~~The Maintenance and Support Services price for year 1 will be prorated based upon the effective date.~~

Upon Acceptance of a Deliverable, and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

Invoices shall be sent to:

Christine Bean
Department of Health and Human Services
Public Health Laboratory
29 Hazen Drive
Concord, NH 03301

4. PAYMENT ADDRESS

All payments shall be sent to the following address:
email all remit advices to AR@dlss.com

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ChemWare, LLC
28035 Network Place
Chicago, IL 60673-1280

5. OVERPAYMENTS TO ChemWare

ChemWare shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notice from the State.

6. CREDITS

The State may apply credits due to the State arising out of this Contract, against ChemWare's invoices with appropriate information attached.

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SPECIAL PROVISIONS

Use the special provision section to show appropriate changes to the terms outlined in the General Provision.

There are no special provisions.

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ADMINISTRATIVE SERVICES**

1. TRAVEL EXPENSES

The ChemWare must assume all reasonable travel and related expenses. All labor rates will be "fully loaded", including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses.

2. SHIPPING AND DELIVERY FEE EXEMPTION

The State will not pay for any shipping or delivery fees unless specifically itemized in the Contract.

3. ACCESS/COOPERATION

As applicable, and subject to the applicable laws and regulations, the State will provide the ChemWare with access to all program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware as required to complete the contracted Services.

The State will use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow the ChemWare to perform its obligations under the Contract.

4. STATE-OWNED DOCUMENTS AND COPYRIGHT PRIVILEGES

The ChemWare shall provide the State access to all State-owned documents, materials, reports, and other work in progress relating to this RFP. Upon expiration or termination of the Contract with the State, the ChemWare shall turn over all State-owned documents, material, reports, and work in progress relating to this RFP to the State at no additional cost to the State. Documents must be provided in both printed and electronic format.

5. RECORDS RETENTION AND ACCESS REQUIREMENTS

ChemWare shall agree to the conditions of all applicable State and federal laws and regulations, which are incorporated herein by reference, regarding retention and access requirements, including without limitation, retention policies consistent with the Federal Acquisition Regulations (FAR) Subpart 4.7 *Contractor Records Retention*.

ChemWare and its Subcontractors shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. ChemWare and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract

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shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or the expiration of the appeal period. ChemWare shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to ChemWare's cost structure and profit factors shall be excluded from the State's review unless the cost of any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

6. ACCOUNTING REQUIREMENTS

ChemWare shall maintain an accounting system in accordance with Generally Accepted Accounting Principles. The costs applicable to the Contract shall be ascertainable from the accounting system and ChemWare shall maintain records pertaining to the Services and all other costs and expenditures.

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IMPLEMENTATION SERVICES**

1. STATE MEETINGS AND REPORTS

Because ChemWare System is installed and in operation and the following meetings and processes do not apply. This contract is primarily for the maintenance of the existing system. The Contract does however allow for approved projects to upgrade or add to the functionality of the software. In the case of such a project the following meetings and processes may apply upon agreement between the parties.

ChemWare Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

- a. **Introductory Meeting:** Participants will include ChemWare Key Project Staff and State Project leaders from both Department of Justice and the Department of Information Technology. This meeting will enable leaders to become acquainted and establish any preliminary Project procedures.
- b. **Kickoff Meeting:** Participants will include the State and ChemWare Project Team and major stakeholders. This meeting is to establish a sound foundation for activities that will follow.
- c. **Status Meetings:** Participants will include, at the minimum, the ChemWare Project Manager and the State Project Manager. These meetings will be conducted at least bi-weekly and address overall Project status and any additional topics needed to remain on schedule and within budget. A status and error report from ChemWare shall serve as the basis for discussion.
- d. **The Work Plan:** must be reviewed at each Status Meeting and updated, at minimum, on a bi-weekly basis, in accordance with the Contract.
- e. **Special Meetings:** Need may arise for a special meeting with State leaders or Project stakeholders to address specific issues.
- f. **Exit Meeting:** Participants will include Project leaders from ChemWare and the State. Discussion will focus on lessons learned from the Project and on follow up options that the State may wish to consider.

The State expects ChemWare to prepare agendas and background for and minutes of meetings. Background for each status meeting must include an updated Work Plan. Drafting of formal presentations, such as a presentation for the kickoff meeting, will also be ChemWare's responsibility.

The ChemWare Project Manager or ChemWare Key Project Staff shall submit monthly status reports in accordance with the Schedule and terms of this Contract. All status reports shall be prepared in formats approved by the State. The ChemWare's Project Manager shall assist the State's Project Manager, or itself produce reports related to Project Management as reasonably requested by the State, all at no additional cost to the State. ChemWare shall produce Project status reports, which shall contain, at a minimum, the following:

1. Project status related to the Work Plan;
2. Deliverable status;
3. Accomplishments during weeks being reported;

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4. Planned activities for the upcoming two (2) week period;
5. Future activities; and
6. Issues and concerns requiring resolution.
7. Report and remedies in case of falling behind Schedule

As reasonably requested by the State, ChemWare shall provide the State with information or reports regarding the Project. ChemWare shall prepare special reports and presentations relating to Project Management, and shall assist the State in preparing reports and presentations, as reasonably requested by the State.

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The ChemWare software is fully implemented, tested and accepted and thus the following testing procedures do not apply. The Contract does however allow for approved projects to upgrade or add to the functionality of the software. In the case of such a project the following testing procedures may apply.

1. TESTING AND ACCEPTANCE

ChemWare shall bear all responsibilities for the full suite of Test Planning and preparation throughout the Project. ChemWare will also provide training as necessary to the State staff responsible for test activities. ChemWare shall be responsible for all aspects of testing contained in the Acceptance Test Plan including support, at no additional cost, during User Acceptance Test conducted by the State and the testing of the training materials.

The Test Plan methodology shall reflect the needs of the Project and be included in the finalized Work Plan. A separate Test Plan and set of test materials will be prepared for each Software function or module.

All Testing and Acceptance (both business and technically oriented testing) shall apply to testing the System as a whole, (e.g., software modules or functions, and Implementation(s)). This shall include planning, test scenario and script development, Data and System preparation for testing, and execution of Unit Tests, System Integration Tests, Conversion Tests, Installation tests, Regression tests, Performance Tuning and Stress tests, Security Review and tests, and support of the State during User Acceptance Test and Implementation.

In addition, ChemWare shall provide a mechanism for reporting actual test results vs. expected results and for the resolution and tracking of all errors and problems identified during test execution. ChemWare shall also correct Deficiencies and support required re-testing.

1.1 Test Planning and Preparation

ChemWare shall provide the State with an overall Test Plan that will guide all testing. The ChemWare provided, State approved, Test Plan will include, at a minimum, identification, preparation, and Documentation of planned testing, a requirements traceability matrix, test variants, test scenarios, test cases, test scripts, test Data, test phases, unit tests, expected results, and a tracking method for reporting actual versus expected results as well as all errors and problems identified during test execution.

As identified in the Acceptance Test Plan, and documented in accordance with the Work Plan and the Contract, State testing will commence upon ChemWare's Project Manager's Certification, in writing, that ChemWare's own staff has successfully executed all prerequisite ChemWare testing, along with reporting the actual testing results, prior to the start of any testing executed by State staff. The State will be presented with a State approved Acceptance Test Plan, test scenarios, test cases, test scripts, test data, and expected results.

The State will commence its testing within five (5) business days of receiving Certification from ChemWare that the State's personnel have been trained and the System is installed, configured, complete, and ready for State testing. The testing will be conducted by the State in an environment

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independent from ChemWare's development environment. ChemWare must assist the State with testing in accordance with the Test Plan and the Work Plan, utilizing test and live Data to validate reports, and conduct stress and performance testing, at no additional cost.

Testing begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

ChemWare must demonstrate that their testing methodology can be integrated with the State standard methodology.

1.2 Unit Testing

In Unit Testing, ChemWare shall test the application components on an individual basis to verify that the inputs, outputs, and processing logic of each application component functions without errors. Unit testing is performed in either the development environment or a testing environment.

The goal is to find errors in the smallest unit of software before logically linking it into larger units. If successful, subsequent testing should only reveal errors related to the integration between application modules.

The ChemWare developer, who is responsible for a specific unit of work, will be responsible for conducting the unit testing of their modules.

Activity Description	Develop the scripts needed to unit test individual application modules, interface(s) and conversion components.
ChemWare Team Responsibilities	For application modules, conversions and interfaces the ChemWare team will identify applicable test scripts and installation instructions, adapt them to the Project specifics, test the process, and compare with the documented expected results.
Work Product Description	Unit-Tested Modules that have been tested to verify that the inputs, outputs, and processing logic of each application module functions without errors. Individual detailed test scripts and installation guides list all the required actions and data to conduct the test, the process for test execution, and the expected results.

1.3 System Integration Testing

The new System is tested in integration with other application systems (legacy and service providers) in a production-like environment. System Integration Testing validates the integration between the individual unit application modules and verifies that the new System meets defined requirements and supports execution of interfaces and business processes. The System Integration Test is performed in a test environment.

Thorough end-to-end testing shall be performed by the ChemWare team(s) to confirm that the Application integrates with any interfaces. The test emphasizes end-to-end business processes, and the flow of information across applications (IF APPROPRIATE). It includes all key business

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processes and interfaces being implemented, confirms data transfers with external parties, and includes the transmission or printing of all electronic and paper documents.

Activity Description	Systems Integration Testing validates the integration between the target application modules and other systems, and verifies that the new System meets defined interface requirements and supports execution of business processes. This test emphasizes end-to-end business processes and the flow of information across the application. It includes all key business processes and interfaces being implemented, confirms data transfers with external parties, and includes the transmission or printing of all electronic and paper documents.
ChemWare Team Responsibilities	<ul style="list-style-type: none"> • Take the lead in developing the Systems Integration Test Specifications. • Work jointly with the State to develop and load the data profiles to support the test Specifications. • Work jointly with the State to validate components of the test scripts.
State Responsibilities	<ul style="list-style-type: none"> • Work jointly with ChemWare to develop the Systems Integration Test Specifications. • Work jointly with ChemWare to develop and load the data profiles to support the test Specifications. • Work jointly with ChemWare to validate components of the test scripts, modifications, fixes and other System interactions with the ChemWare supplied Software Solution.
Work Product Description	<ul style="list-style-type: none"> • The Integration-Tested System indicates that all interfaces between the application and the legacy and third-party systems, interfaces, and applications are functioning properly.

1.4 Conversion Validation Testing

In Conversion Validation Testing, target application functions are validated.

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Activity Description	The conversion validation test should replicate the entire flow of the converted data through the Software Solution. As the Software Solution is interfaced to legacy or third-party applications/interfaces, testing verifies that the resulting flow of the converted data through these interface points performs correctly.
ChemWare Team Responsibilities	For conversions and interfaces, the ChemWare team will execute the applicable validation tests and compare execution results with the documented expected results.
State Responsibilities	Extract and cleanse, if necessary, the legacy data to be converted in the data conversions. <CAN MAKE THIS A ChemWare RESPONSIBILITY>
Work Product Description	Validation-Tested Conversion Programs. These programs include conversion programs that have been tested to verify that the resulting converted legacy data performs correctly in the entire suite of the Application.

1.5 Installation Testing

In Installation Testing the application components are installed in the System Test environment to test the installation routines and are refined for the eventual production environment. This activity serves as a dry run of the installation steps in preparation for configuring the production system.

1.6 User Acceptance Testing (UAT)

UAT begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

The ChemWare's Project Manager must certify in writing, that the ChemWare's own staff has successfully executed all prerequisite ChemWare testing, along with reporting the actual testing results prior to the start of any testing executed by State staff.

The State shall be presented with all testing results, as well as written Certification that ChemWare has successfully completed the prerequisite tests, meeting the defined Acceptance Criteria, and performance standards. The State shall commence testing within five (5) business days of receiving Certification, in writing, from ChemWare that the system is installed, configured, complete and ready for State testing. The State shall conduct the UAT utilizing scripts developed as identified in the Acceptance Test Plan to validate the functionality of the System and the interfaces, and verify Implementation readiness. UAT is performed in a copy of the production environment and can serve as a performance and stress test of the System. The User Acceptance Test may cover any aspect of the new System, including administrative procedures (such as backup and recovery).

The User Acceptance Test (UAT) is a verification process performed in a copy of the production environment. The User Acceptance Test verifies System functionality against predefined Acceptance criteria that support the successful execution of approved business processes.

UAT will also serve as a performance and stress test of the System. It may cover any aspect of the new System, including administrative procedures such as backup and recovery. The results of the UAT provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.

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The results of the User Acceptance Test provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.

Upon successful conclusion of UAT and successful System deployment, the State will issue a letter of UAT Acceptance and the respective Warranty Period shall commence

Activity Description	The System User Acceptance Tests verify System functionality against predefined Acceptance criteria that support the successful execution of approved processes.
ChemWare Team Responsibilities	<ul style="list-style-type: none"> • Provide the State an Acceptance Test Plan and selection of test scripts for the Acceptance Test. • Monitor the execution of the test scripts and assist as needed during the User Acceptance Test activities. • Work jointly with the State in determining the required actions for problem resolution.
State Responsibilities	<ul style="list-style-type: none"> • Approve the development of the User Acceptance Test Plan and the set of data for use during the User Acceptance Test. • Validate the Acceptance Test environment. • Execute the test scripts and conduct User Acceptance Test activities. • Document and summarize Acceptance Test results. • Work jointly with ChemWare in determining the required actions for problem resolution. • Provide Acceptance of the validated Systems.
Work Product Description	The Deliverable for User Acceptance Tests is the User Acceptance Test Results. These results provide evidence that the new System meets the User Acceptance criteria defined in the Work Plan.

1.7 Performance Tuning and Stress Testing

ChemWare shall develop and document hardware and Software configuration and tuning of the Horizon infrastructure as well as assist and direct the State's System Administrators and Database Administrators in configuring and tuning the infrastructure to support the software throughout the Project

1.7.1 Scope

The scope of **Performance Testing** shall be to measure the System level metrics critical for the development of the applications infrastructure and operation of the applications in the production environment.

It will include the measurement of response rates of the application for end-user transactions and resource utilization (of various servers and network) under various load conditions. These response rates shall become the basis for changes and retesting until optimum System performance is achieved.

Performance testing and tuning shall occur in the final production environment and shall use a copy of the final production database to provide the best results.

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1.7.2 Test Types

Performance testing shall use two different types of testing to determine the stability of the application. They are baseline tests and load tests.

- a) **Baseline Tests:** Baseline tests shall collect performance data and load analysis by running scripts where the output is broken down into business transactions or functions. The test is like a single user executing a defined business transaction. During baseline testing, each individual script is run to establish a baseline for transaction response time, throughput and other user-based metrics.
- b) **Load Tests:** Load testing will determine if the behavior of the System can be sustained over a long period of time while running under expected conditions. Load test helps to verify the ability of the application environment under different load conditions based on workload distribution. System response time and utilization is measured and recorded.

1.7.3 Tuning

Tuning will be ChemWare led and occur during both the development of the application and load testing. Tuning is the process whereby the application performance is maximized. This can be the result of making code more efficient during development as well as making tuning parameter changes to the environment.

1.7.4 Implementing Performance and Stress Test

Performance and stress test tools must be provided by the ChemWare for this effort. Consideration must be given to licensing with respect to continued use for regression testing. If the ChemWare is familiar with open source low/no cost tools for this purpose those tools should be identified in your response.

1.7.5 Scheduling Performance and Stress Testing

ChemWare shall perform Test Planning. The steps for planning include identification of application functionality as well as what percentage of normal daily use is represented by each function. This information will become the foundation for scripting so that tests closely represent what loads in production will look like.

ChemWare shall provide definition and expectations from testing. This definition should include who is in charge of testing and coordinating results, anticipated run times, logs required for tracking, their locations and which technician is responsible to track and provide them following each test to the team.

Initial test runs shall be completed to establish that the tests and data sets can be run to completion without errors. The ratio of types of transactions which makeup the test shall be reviewed prior to the beginning of testing and then again once testing has begun to make sure that testing accurately reflects the system performing in production.

Initial tests shall be used to establish a baseline from which all subsequent tests will be compared. Tests will be considered for baseline status once two of them have been run within 2% of each other in key and overall performance areas. No changes to the test scripts or data sets (with the exception of restores after each test) can be done to the test environment once tuning has begun so as not to damage the comparison to baseline results. The systems must be restarted prior to each test run to assure all cache is cleaned out. All effort will be made to run these tests at a time when

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system and network infrastructure utilization doesn't impact the results. Tests will be run in close proximity to our infrastructure so as to eliminate the public network from our environment.

Posttest reporting and result assessment will be scheduled following each test. The team will compare these results to the baseline and a determination must be made to make additional changes to the parameter being tuned or return to the prior configuration and select another parameter to tune while keeping in mind that significant changes to any one parameter may require the retesting of some others. Careful work on identifying dependencies up front should minimize this impact.

If defects are identified in the application during testing they will be recorded; however, changes to the application code should be avoided if possible so as not to affect baseline comparisons. If a change to the application is required new baselines will be established (and possibly the execution of prior tests to validate changes with the new application) before testing can continue.

When performing capacity testing against a GUI the focus will be on the ability of the interface to respond to user input.

During stress/load testing the tester will attempt to stress or load an aspect of the system to the point of failure. The goal is to determine weak points in the system architecture. The tester will identify peak load conditions at which the program will fail to handle required processing loads within required time spans.

During Performance testing the tester will design test case scenarios to determine if the system meets the stated performance criteria (i.e. A Login request shall be responded to in 1 second or less under a typical daily load of 1000 requests per minute.). In both cases the tester will determine the capacity of the system under a known set of conditions.

1.8 Regression Testing

As a result, of the user testing activities, problems will be identified that require correction. The State will notify the ChemWare of the nature of the testing failures in writing. The ChemWare will be required to perform additional testing activities in response to State and/or user problems identified from the testing results. Regression testing means selective re-testing to detect faults introduced during the modification effort, both to verify that the modifications have not caused unintended adverse effects, and to verify that the modified and related (possibly affected) System components still meet their specified requirements:

- a.) For each minor failure of an Acceptance Test, the Acceptance Period shall be extended by corresponding time defined in the Test Plan.
- b.) ChemWare shall notify the State no later than <five (5) business days> from the ChemWare's receipt of written notice of the test failure when ChemWare expects the corrections to be completed and ready for retesting by the State. ChemWare will have up to five (5) business days to make corrections to the problem unless specifically extended in writing by the State.

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- c.) When a programming change is made in response to a problem identified during user testing, a regression Test Plan should be developed by ChemWare based on the understanding of the program and the change being made to the program. The Test Plan has two objectives:
1. validate that the change/update has been properly incorporated into the program; and
 2. validate that there has been no unintended change to the other portions of the program.
- d.) ChemWare will be expected to:
1. Create a set of test conditions, test cases, and test data that will validate that the change has been incorporated correctly;
 2. Create a set of test conditions, test cases, and test data that will validate that the unchanged portions of the program still operate correctly; and
 3. Manage the entire cyclic process.
- e.) ChemWare will be expected to execute the regression test, provide actual testing results, and certify its completion in writing to the State prior to passing the modified Software application to the users for retesting.

In designing and conducting such regression testing, ChemWare will be required to assess the risks inherent to the modification being implemented and weigh those risks against the time and effort required for conducting the regression tests. In other words, ChemWare will be expected to design and conduct regression tests that will identify any unintended consequences of the modification while taking into account Schedule and economic considerations.

1.9 Security Review and Testing

IT Security involves all functions pertaining to the securing of State Data and Systems through the ~~creation and definition of security policies, procedures and controls covering such areas as~~ identification, authentication and non-repudiation.

All components of the Software shall be reviewed and tested to ensure they protect the State's hardware and software and its related Data assets. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability. Tests shall, at a minimum, cover each of the service components. Test procedures shall include penetration tests (pen tests), code analysis, and review.

Service Component	Defines the set of capabilities that:
Identification and Authentication	Supports obtaining information about those parties attempting to log onto a system or application for security purposes and the validation of users
Access Control	Supports the management of permissions for logging onto a computer or network
Encryption	Supports the encoding of data for security purposes
Intrusion Detection	Supports the detection of illegal entrance into a computer system

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Verification	Supports the confirmation of authority to enter a computer system, application or network
Digital Signature	Guarantees the unaltered state of a file
User Management	Supports the administration of computer, application and network accounts within an organization.
Role/Privilege Management	Supports the granting of abilities to users or groups of users of a computer, application or network
Audit Trail Capture and Analysis	Supports the identification and monitoring of activities within an application or system
Input Validation	Ensures the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server.

Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability. Tests shall, at a minimum, cover each of the service components. The ChemWare shall provide a certificate of application, vulnerability scanning, and 3rd party Penetration Tests (pen test) when appropriate.

Prior to the System being moved into production ChemWare shall provide results of all security testing to the Department of Information Technology for review and Acceptance. All Software and hardware shall be free of malicious code (malware).

1.10 Successful UAT Completion

Upon successful completion of UAT, the State will issue a Letter of UAT Acceptance.

1.11 System Acceptance

Upon completion of the Warranty Period, the State shall issue a Letter of Final System Acceptance.

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MAINTENANCE AND SUPPORT SERVICES**

1. SYSTEM MAINTENANCE

ChemWare shall maintain and support the Horizon LIMS System in all material respects as described in the applicable program Documentation through the contract end date.

1.1 ChemWare's Responsibility

ChemWare shall maintain the Horizon LIMS in accordance with the Contract. ChemWare will not be responsible for maintenance or support for Software developed or modified by the State.

1.1.1 Maintenance Releases

ChemWare shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.

2. SYSTEM SUPPORT

2.1 ChemWare's Responsibility

ChemWare will be responsible for performing on-site or remote technical support in accordance with the Contract Documents, including without limitation, the requirements, terms, and conditions contained herein.

As part of the Software maintenance agreement, ongoing Software maintenance and support levels, including all new Software releases, shall be responded to according to the following:

a. Severity 1 Deficiencies (Telephone Support)

For all Class A Deficiencies, ChemWare shall provide, to the State, on-call telephone assistance, with issue tracking available to the State, 8:00 AM - 6:00 PM EST Monday through Friday with an immediate e-mail / telephone response;

b. Severity 1 Deficiencies (On-site or Remote Support)

For all Class A Deficiencies, ChemWare shall provide support on-site, or with remote diagnostic services, within one (1) hour of a request; and

c. Severity 3 Deficiencies - The State shall notify ChemWare of such Deficiencies during regular business hours and the ChemWare shall respond back within four (4) hours of notification

3. SUPPORT OBLIGATIONS AND TERM

3.1 ChemWare shall repair or replace Software, and provide maintenance of the Software in accordance with the Specifications and terms and requirements of the Contract;

3.2 ChemWare shall maintain a record of the activities related to warranty repair or maintenance activities performed for the State;

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- 3.3 For all maintenance Services calls, ChemWare shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information, 6) Resolved by, 7) Identifying number i.e. work order number, 8) Issue identified by; and
- 3.4 ChemWare must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.
- 3.5 If ChemWare fails to correct a Deficiency within the allotted period of time stated above, ChemWare shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 2 Section 13.1.1.2, as well as to return ChemWare's product and receive a refund for all amounts paid to ChemWare, including but not limited to, applicable license fees, within ninety (90) days of notification to ChemWare of the State's refund request
- 3.6 If ChemWare fails to correct a Deficiency within the allotted period of time stated above, ChemWare shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 1 Section 14.

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REQUIREMENTS**

This contract is for maintenance services of the Horizon LIMS system which is already installed, tested and hosted on State servers, the requirements in Table H-1 apply. Should a major project be proposed as part of the contract optional project provisions, requirements shall be developed and agreed upon by the parties for that project.

TABLE H-1: SUPPORT AND MAINTENANCE

SUPPORT AND MAINTENANCE	
Require ment #	Requirement Description:
SI.1	The Vendor's System support and maintenance shall commence upon the Effective Date and extend through the end of the Contract term, and any extensions thereof.
SI.2	Maintain the Software in accordance with the Specifications, terms, and requirements of the Contract, including providing, upgrades and fixes as required.
SI.3	Repair or replace the Software, or any portion thereof, so that the System operates in accordance with the Specifications, terms, and requirements of the Contract.
SI.4	The State shall have unlimited access, via phone or Email, to the Vendor technical support staff between the hours of 8:30am to 5:00pm- Monday thru Friday EST;
SI.5	The Vendor shall make available to the State the latest program updates, general maintenance releases, selected functionality releases, patches, and Documentation that are generally offered to its customers, at no additional cost.
SI.6	The Vendor shall maintain a record of the activities related to repair or maintenance activities performed for the State;
SI.7	For all maintenance Services calls, The Vendor shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information, 6) Resolved by, 7) Identifying number i.e. work order number, 8) Issue identified by;
SI.8	The Vendor must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.
SI.9	The Vendor response time for support shall conform to the specific deficiency class as described below: <ul style="list-style-type: none"> o Class A Deficiency - Software - Critical, does not allow System to operate, no work around, demands immediate action; Written Documentation - missing significant portions of information or

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	<p>unintelligible to State; Non Software - Services were inadequate and require re-performance of the Service. o Class B Deficiency - Software - important, does not stop operation and/or there is a work around and user can perform tasks; Written Documentation - portions of information are missing but not enough to make the document unintelligible; Non Software - Services were deficient, require reworking, but do not require re-performance of the Service. o Class C Deficiency - Software - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; Written Documentation - minimal changes required and of minor editing nature; Non Software - Services require only minor reworking and do not require re-performance of the Service or as agreed to by the parties.</p>
S1.10	<p>A critical outage will be designated when a business function cannot be met by a nonperforming application and there is no work around to the problem.</p>

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WORK PLAN**

This contract is for maintenance services of the Horizon LIMS system which is already installed, tested and hosted on State servers. Should a major project be proposed as part of the contract optional project provisions, a work plan shall be developed and approved by the DHHS Public Health Laboratory and the Department of Information Technology.

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SOFTWARE LICENSE**

1. LICENSE GRANT

Subject to the payment of applicable license fees set forth in Contract Exhibit B: *Price and Payment Schedule*, ChemWare hereby grants to the State a worldwide, perpetual, irrevocable, non-exclusive, non-transferable, limited license to use the Software and its associated Documentation, subject to the terms of the Contract. The State may allow its agents and Contractors to access and use the Software, and in such event, the State shall first obtain written agreement from such agents and Contractors that each shall abide by the terms and conditions set forth herein.

2. SOFTWARE AND DOCUMENTATION COPIES

ChemWare shall provide the State with a sufficient number of hard copy versions of the Software's associated Documentation and one (1) electronic version in Microsoft WORD and PDF format. The State shall have the right to copy the Software and its associated Documentation for its internal business needs. The State agrees to include copyright and proprietary notices provided to the State by the ChemWare on such copies.

3. RESTRICTIONS

Except as otherwise permitted under the Contract, the State agrees not to:

- a. Remove or modify any program markings or any notice of ChemWare's proprietary rights;
- b. Make the programs or materials available in any manner to any third party for use in the third party's business operations, except as permitted herein; or
- c. Cause or permit reverse engineering, disassembly or recompilation of the programs.

4. TITLE

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with ChemWare.

5. VIRUSES

ChemWare shall provide Software that is free of viruses, destructive programming, and mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

As a part of its internal development process, ChemWare will use reasonable efforts to test the Software for viruses. ChemWare shall also maintain a master copy of the appropriate versions of the Software, free of viruses. If the State believes a virus may be present in the Software, then upon its request, ChemWare shall provide a master copy for comparison with and correction of the State's copy of the Software.

6. AUDIT

Upon forty-five (45) days written notice, ChemWare may audit the State's use of the programs at ChemWare's sole expense. The State agrees to cooperate with ChemWare's audit and provide reasonable assistance and access to information. The State agrees that ChemWare shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. Notwithstanding the foregoing, ChemWare's audit rights are subject to applicable State and federal laws and regulations.

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7. SOFTWARE NON-INFRINGEMENT

ChemWare warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

The warranty of non-infringement shall be an on-going and perpetual obligation that shall survive termination of the Contract. In the event that someone makes a claim against the State that any Material infringe their intellectual property rights, ChemWare shall defend and indemnify the State against the claim provided that the State:

- a. Promptly notifies ChemWare in writing, not later than 30 days after the State receives actual written notice of such claim;
- b. Gives ChemWare control of the defense and any settlement negotiations; and
- c. Gives ChemWare the information, authority, and assistance reasonably needed to defend against or settle the claim.

Notwithstanding the foregoing, the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

If ChemWare believes or it is determined that any of the Material may have violated someone else's intellectual property rights, ChemWare may choose to either modify the Material to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, ChemWare may end the license, and require return of the applicable Material and refund all fees the State has paid ChemWare under the Contract. ChemWare will not indemnify the State if the State alters the Material without ChemWare's consent or uses it outside the scope of use identified in ChemWare's user Documentation or if the State uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the State at no additional cost. ChemWare will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, data, or material not furnished by ChemWare. ChemWare will not indemnify the State to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by ChemWare without ChemWare's consent.

8. SOFTWARE ESCROW

8.1 ChemWare represents and warrants that the currently existing source code for the Software licensed to the State under the Contract, as well as the Documentation for such Software, and developer comments to the source code for the Software (the "Deposit Materials") have been deposited in an escrow account maintained at Business Records Management, Inc., 923 Bidwell Street, Pittsburgh, PA 15233 "Escrow Agent") as required by this Contract. Future Deposit Materials for major version releases (e.g., X.y.z) of the Software not otherwise delivered to the State Licensee as source code shall be deposited in the escrow account (normally within six (6) months after the first commercial shipment of each such release). ChemWare shall promptly pay to the Escrow Agent all escrow fees that become due under the Escrow Agreement to maintain the Software in escrow.

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- 8.2 ChemWare agrees that, upon execution of this Contract, the State shall be added to the Escrow Agreement as a beneficiary. The Escrow Agent shall notify the State that it has been added as a subscriber within a commercially reasonable time. Thereafter, upon the request of the State, to be made no more frequently than annually, ChemWare shall provide the State with written verification that the Software has been deposited with the Escrow Agent.
- 8.3 The Escrow Agent shall make and release a copy of the applicable Deposit Materials to the State upon the occurrence of any of the following events ("Release Events"):
- (a) ChemWare has made an assignment for the benefit of creditors;
 - (b) ChemWare institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind;
 - (c) A receiver or similar officer has been appointed to take charge of all or part of ChemWare's assets;
 - (d) ChemWare terminates its maintenance and operations support services for the State for the Software or has ceased supporting and maintaining the Software for the State whether due to its ceasing to conduct business generally or otherwise, except in cases where the termination or cessation is a result of the non-payment or other fault of the State;
 - (e) ChemWare defaults under the Contract; or
 - (f) ChemWare ceases its on-going business operations or that portion of its business operations relating to the licensing and maintenance of the Software.
- 8.4 In the event that Deposit Materials are released from escrow to the State, ChemWare hereby grants the State the right to use, copy, modify, display, distribute, and prepare derivative works of the Deposit Materials, and to authorize others to do the same on behalf of the State (Contractors, agents, etc.), solely for the purpose of completing the performance of ChemWare's obligations under the Contract, including, but not limited to, providing maintenance and support for the Software and subject to the rights granted in this Contract.
- 8.5 ChemWare agrees to pay all costs associated with the escrow covered by this Contract, except for nominal fees to cover the cost of reproduction and distribution of release of the Deposit Materials to the State, including all related reasonable administrative expenses.

1. WARRANTIES

1.1 System

(ChemWare) warrants that the System will operate to conform to the Specifications, terms, and requirements of the Contract.

1.2 Software

ChemWare warrants that the Software, including but not limited to the individual modules or functions furnished under the Contract, is properly functioning within

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WARRANTY AND WARRANTY SERVICES**

the System, compliant with the requirements of the Contract, and will operate in accordance with the Specifications and Terms of the Contract.

For any breach of the above Software warranty, the State's remedy, and ChemWare's entire liability, shall be: (a) the correction of program errors that cause breach of the warranty, or if ChemWare cannot substantially correct such breach in a commercially reasonable manner, the State may end its program license if any and recover the fees paid to ChemWare for the program license and any unused, prepaid technical support fees the State has paid for the program license; or (b) the re-performance of the deficient Services, or (c) if ChemWare cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to ChemWare for the deficient Services.

1.3 Non-Infringement

ChemWare warrants that it has good title to, or the right to allow the State to use, all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

1.4 Viruses; Destructive Programming

ChemWare warrants that the Software shall not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

1.5 Compatibility

ChemWare warrants that all System components, including but not limited to the components provided, including any replacement or upgraded System Software components provided by ChemWare to correct Deficiencies or as an Enhancement, shall operate with the rest of the System without loss of any functionality.

1.6 Services

ChemWare warrants that all Services to be provided under the Contract will be provided expediently, in a professional manner, in accordance with industry standards and that Services will comply with performance standards, Specifications, and terms of the Contract.

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WARRANTY AND WARRANTY SERVICES

2. WARRANTY PERIOD

The Warranty Period shall remain in effect until the conclusion or termination of this Contract and any extensions.

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CERTIFICATES AND ATTACHMENTS

Attached are:

- A. Contractor's Certificate of Vote/Authority
- B. Contractor's Certificate of Good Standing
- C. Contractor's Certificate of Insurance