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Lori A. Shibinette  
Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF THE COMMISSIONER

129 PLEASANT STREET, CONCORD, NH 03301-3857  
603-271-9200 1-800-852-3345 Ext. 9200  
Fax: 603-271-4912 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

January 21, 2022

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

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Office of the Commissioner, to enter into a Memorandum of Understanding with the New Hampshire Liquor Commission (NHLC), 5 Storrs Street, Concord, NH 03301 (Vendor #177913 B001), for the purpose of offering COVID-19 antigen at-home rapid test kits to the public and businesses, with the option to renew for up to one (1) additional year, effective upon Governor and Executive Council approval through December 31, 2022.

**EXPLANATION**

This request provides for a Memorandum of Understanding (MOU) between the Department of Health and Human Services (DHHS) and the NHLC to make at-home COVID-19 antigen test kits available for purchase at New Hampshire Liquor & Wine Outlet stores.

DHHS is in the process of purchasing one (1) million COVID-19 antigen test kits, which allow an individual to conduct an at-home test and receive rapid results. Once purchased, the COVID-19 test kits will be delivered and stored at the NHLC's warehouse locations in accordance with the terms of this MOU. The NHLC will distribute the test kits to its New Hampshire Liquor & Wine Outlet stores where they will be initially sold at the same price paid by DHHS plus a \$1.50 sub-pack charge of \$1.50 per case. The NHLC will only charge a \$1.50 sub-pack charge per case to offset storage and distribution costs. The NHLC will not offer discounts for bulk purchases. The pricing is subject to change based on the price the Department pays for the test kits.

This Memorandum of Understanding provides for the option to extend the agreement for up one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

Area served: Statewide

Respectfully submitted,

DocuSigned by:  
*Lori A. Shibinette*  
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Lori A. Shibinette  
Commissioner

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES



AND

THE NEW HAMPSHIRE LIQUOR COMMISSION

MOU-2022-OCOM-01-TESTS-01

**1. GENERAL PROVISIONS**

- 1.1. This Memorandum of Understanding (MOU) is between the New Hampshire Department of Health and Human Services (DHHS), 129 Pleasant Street, Concord, NH 03301 and the New Hampshire Liquor Commission (NHLC), 50 Storrs Street, Concord, New Hampshire 03301 (referred to as the "Parties").
- 1.2. During the COVID-19 pandemic, it is of the utmost importance that the public and businesses in the State of New Hampshire have access to COVID-19 rapid test kits. This requires the development of a distribution system that may be rapidly set up, is sustainable, cost-effective, and provides easy test access for citizens and businesses.
- 1.3. The purpose of this MOU is to set forth the roles and responsibilities of the DHHS and the NHLC regarding the sale in New Hampshire Liquor & Wine Outlet stores and/or through the NHLC's warehouses of COVID-19 Test Kits initially purchased by the DHHS. The NHLC will subsequently pay for the COVID-19 Test Kits through the purchase order and invoicing processes described below.
- 1.4. In connection with the performance of this MOU, the DHHS and the NHLC shall comply with all applicable laws and regulations.

**2. TERM**

- 2.1. Effective date: This MOU is effective upon execution by all signatories, review by the Office of the Attorney General, and approval by the Governor and Executive Council.
- 2.2. Duration: The duration of this MOU is from the Effective Date through December 31, 2022. The parties may extend this MOU for up to one (1) year at any time by mutual written agreement, subject to the continued availability of funds, satisfactory performance of responsibilities, and review by the Office of the Attorney General.
- 2.3. Modification: The parties may modify this MOU by mutual written agreement at any time, subject to the approval of the parties, review by the Office of the Attorney General, and approval of the Governor and Executive Council.
- 2.4. Termination: Either party may unilaterally terminate this MOU upon written notice to the other party, in which case the termination shall be effective thirty (30) days after the date of that notice or at a later date specified in the notice.

**3. RESPONSIBILITIES OF THE NEW HAMPSHIRE LIQUOR COMMISSION**

- 3.1. The NHLC agrees to:
  - 3.1.1. Store one (1) million COVID-19 Test Kits, initially purchased by the DHHS, in its warehouses until the NHLC generates purchase orders (PO) for the COVID-19 Test Kits.
  - 3.1.2. Create POs for the COVID-19 Test Kits and send the POs to the DHHS on a monthly, or, if necessary, a more frequent basis.
  - 3.1.3. Mail, or email, POs to:



**Memorandum of Understanding Between DHHS and NHLC  
MOU-2022-DHHS-OCOM-01-TESTS-01**

Cheryl Connor  
Office of the Commissioner  
129 Pleasant Street  
Concord, NH 03301  
(603) 271-9224  
[Cheryl.Connor@dhhs.nh.gov](mailto:Cheryl.Connor@dhhs.nh.gov)

- 3.1.4. Within thirty (30) days, pay any invoices sent by the DHHS to the NHLC for the cost of the COVID-19 Test Kits to the vendor number specified on the invoice.
- 3.1.5. Handle all distribution required once the COVID-19 Test Kits are delivered to the NHLC's warehouses and purchased from the DHHS.
- 3.1.6. Offer for sale, in its New Hampshire Liquor & Wine Outlet stores, to licensees and retail customers, or to licensees through the warehouse, the COVID-19 Test Kits.
- 3.1.7. Make COVID-19 Test Kits available for purchase.
  - 3.1.7.1. The NHLC shall sell the COVID-19 Test Kits at the same price paid by DHHS to purchase the COVID-19 Test Kits from the original supplier, plus a sub-pack charge of \$1.50 per case.
  - 3.1.7.2. The price that the NHLC charges for the COVID-19 Test Kits is subject to change based upon the price that DHHS pays for the COVID-19 Test Kits. In the event the price changes, the NHLC shall offer the COVID-19 Test Kits for sale at the price that DHHS paid for the COVID-19 Test Kits, plus a \$1.50 sub-pack charge per case, which offsets the NHLC's cost of storing and distributing the COVID-19 Test Kits. The sub-pack charge shall not result in profit to the NHLC.
  - 3.1.7.3. NHLC shall not offer any discount for bulk purchases.
- 3.1.8. Create a Stock Keeping Unit (SKU) that allows for inventory and sales tracking.

**4. RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- 4.1. The DHHS agrees to:
  - 4.1.1. Make available and deliver to the NHLC warehouses approximately one (1) million COVID-19 Test Kits stored in NHLC warehouses.
  - 4.1.2. Upon receipt of a PO from the NHLC, send an invoice specifying a vendor and PO number for payment.
  - 4.1.3. Mail, or email, COVID-19 Test Kits purchase invoices to:

NHLC  
Attn: Accounts Payable  
P.O. Box 503  
Concord, NH 03302-0503  
[Liqaddept@liquor.nh.gov](mailto:Liqaddept@liquor.nh.gov)

**5. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES:**



**Memorandum of Understanding Between DHHS and NHLC  
MOU-2022-DHHS-OCOM-01-TESTS-01**

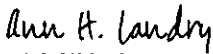
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- 5.1. Notwithstanding any provision of this MOU to the contrary, all obligations of the DHHS hereunder are contingent upon the availability and continued availability of COVID-19 Test Kits.
- 5.2. To the extent the DHHS determines that COVID-19 Test Kits, in the possession of the NHLC, are needed for distribution to health care providers or other related organizations, NHLC agrees to make COVID-19 Test Kits, in its possession, immediately available to the DHHS in the quantities requested by the DHHS. In the event that the DHHS redirects COVID-19 Test Kits from the NHLC to health care providers or other partners, the NHLC shall not generate a purchase order for, nor shall it pay the DHHS for the COVID-19 Test Kits. In the event that the NHLC has already paid for COVID-19 Test Kits redirected by the DHHS to health care providers, the DHHS shall reimburse the NHLC the amount paid by the NHLC for the COVID-19 Test Kits.
- 5.3. If at the conclusion of the MOU there are additional COVID-19 Test Kits at the NHLC warehouses, DHHS shall retrieve the COVID-19 Test Kits from the NHLC.
- 5.4. Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
- 5.5. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
- 5.6. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
- 5.7. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
- 5.8. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
- 5.9. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.



**Memorandum of Understanding Between DHHS and NHLC  
MOU-2022-DHHS-OCOM-01-TESTS-01**

**APPROVALS:**

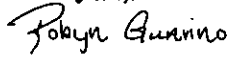
<small>DocuSigned by:</small>  <small>24BAB37EDBE8488...</small>	1/21/2022
Ann Landry Associate Commissioner NH Department of Health and Human Services	Date

<small>DocuSigned by:</small>  <small>A337931E1B97498...</small>	1/21/2022
Joseph H. Mollica Chairman NH Liquor Commission	Date

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

**OFFICE OF THE ATTORNEY GENERAL**

1/24/2022  
Date:

<small>DocuSigned by:</small>  <small>748734844941460...</small>
Name: Robyn Guarino Title: Attorney

The foregoing Memorandum of Understanding was approved by the following authority of the State of New Hampshire:

Date:

Name:  
Title: