

MA 18P 19123000000000000093
NEW

State of Maine



Master Agreement

Effective Date: 05/21/20

Expiration Date: 10/31/22

Master Agreement Description: Rental of Panther APTIMA and Consumables

Buyer Information

Justin Franzose	207-624-7337	ext.	justin.franzose@maine.gov
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Issuer Information

Lisa Robbins	207-287-1709	ext.	lisa.robbins@maine.gov
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Requestor Information

Lisa Robbins	207-287-1709	ext.	lisa.robbins@maine.gov
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Agreement Reporting Categories

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VS0000001922

Vendor Name

Gen Probe Sales & Service

Alias/DBA

Vendor Address Information

10210 Genetic Center Drive
Customer Service
San Diego, CA 92121
US

Vendor Contact Information

Matt Martinson
800-523-5001 ext. 8273
customerservice@gen-probe.com

Commodity Information

Vendor Line #: 1
Vendor Name: Gen Probe Sales & Service
Commodity Line #: 1
Commodity Code: 93863
Commodity Description: Rental of Panther APTIMA and Consumables
Commodity Specifications:
Commodity Extended Description:

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
Contract Amount	Service Start Date	Service End Date
0.00	05/21/20	10/31/22
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Please see authorized signatures displayed on the next page

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

State of Maine - Department of Administrative and Financial Services

- DocuSigned by:

Jaime Schorr

6/15/2020

~~6D6437754DD0450...~~

Signature

Date

Jaime C. Schorr, Chief Procurement Officer

Vendor

- DocuSigned by:

Keith Gantner (CD)

6/16/2020

64E263FAC1794A5...

Signature

Date

Keith Gantner(CD)

SVP, Commercial, Diagnostics Solutions

Print Representative Name and Title

RIDERS

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference: (check all that apply)
<input checked="" type="checkbox"/>	Rider A – Scope of Work and/or Specifications
<input checked="" type="checkbox"/>	Rider B – Terms and Conditions
<input type="checkbox"/>	Rider C - Exceptions
<input checked="" type="checkbox"/>	Bid Cover Page and Debarment Form
<input type="checkbox"/>	Debarment, Performance, and Non-Collusion Certification
<input type="checkbox"/>	Price sheet (attach excel spreadsheet to post on website)
<input checked="" type="checkbox"/>	Other – Included at Department's Discretion

RIDER A

Scope of Work and/or Specifications

This master agreement is for a three-year rental of the Panther testing instrument, and purchase of the Aptima related consumable supplies and reagents. The vendor agrees to supply the Panther test instrument and Aptima consumable commodities at the agreed upon prices. Delivery Orders (DOs) may be submitted as needed until the expiration date. All DOs will be subject to the prices, terms, and conditions of this master agreement. Prices shall remain firm until the expiration date.

All prices are per Hologic quote dated December 27th, 2019, attached and hereby incorporated into this contract and the Panther Equipment Usage Program details below. All quoted prices are in effect until October 31st, 2022.

PANTHER EQUIPMENT USAGE PROGRAM "EUP")

Program Terms

1. **Equipment:** In consideration of the Purchase Commitment, Contractor shall provide Customer with the use of the Equipment ("Equipment") specified below for the Term, which shall include on-site installation and training by Contractor authorized personnel. Contractor will retain title to the Equipment during the Term and may file a standard Uniform Commercial Code ("UCC") Form 1 to perfect its interest in the Equipment. Customer will notify Contractor immediately if any attachment, encumbrance, lien or security interest is filed and will be responsible for any loss or damage to the extent the attachment, encumbrance, lien or security interest is filed due to an act or inaction by the Customer. Notwithstanding the foregoing, nothing here shall be construed as a waiver of Customer's right to sovereign immunity. Customer shall remain responsible for the normal care and maintenance of the Equipment. Should Customer be in Material Breach, Contractor may immediately require Customer to arrange the return of any Contractor-owned Equipment to Contractor.
2. **Location and Care of Equipment; Labels.** Customer will not make any changes to the Equipment. Customer will use the same standard of care to protect the Equipment from loss and damage as it uses to protect its own equipment. Customer will use the Equipment only at the Customer address noted in this Attachment and shall not move or otherwise relocate the Equipment without Contractor's prior written consent. If Customer requires the Equipment to be relocated, Customer agrees to contact Contractor's service department to make arrangements for Contractor authorized personnel to relocate the Equipment and Customer shall pay for all costs associated with such relocation. Customer will not remove any labels, tags, symbols or serial numbers that may be affixed to any items of Equipment unless removal is required or approved by Contractor in writing.
3. **Panther Service.**
 - a. **SERVICES INCLUDED.** During the Term, the following service will be provided:
 1. Labor, necessary replacement parts (excluding disposables which include, but are not limited to, tips, MTU's, TTU's, waste bags, and bench covers), and Contractor travel expenses.
 2. Preventative maintenance by Contractor service technician according to operator's or user's manual, (Monday through Friday only).,
 3. Equipment repair for reasons other than those listed below under Services Excluded.
 4. Access to Contractor Technical Support telephone support, Monday through Friday, 5:00AM to 5:00 PM Pacific Standard Time (excluding Contractor holidays).
 5. Telephone Number for all Technical Support: 888-484-4747
 6. Factory authorized updates or modifications, including parts.
 - b. **Service Representative Dispatch and PRO360° REMOTE DIAGNOSTICS**
 1. Representative on site within 24 hours (Monday – Friday) if PRO360° Remote Diagnostics Management is installed.

2. Representative on site within 48 hours (Monday – Friday) if PRO360° Remote Diagnostics is not installed. Service response times are predicated upon the Equipment operator being willing and able to transfer Equipment log files to Contractor when instructed by Contractor Technical Support using the protocol described in the Equipment Operator's Manual.
- c. **SERVICES EXCLUDED.** The services excluded under the Standard Service option are the following:
 1. Any repair required because of causes other than use of the Equipment pursuant to the operator's or user's manual. Such causes include, but are not limited to: misuse, abuse, improper use, casualty loss, neglect, reprogramming error, malfunction or failure of environmental control Equipment, electrical Equipment malfunction or failure, repair maintenance, modification, relocation, or reinstallation by other than Contractor authorized personnel, installation of commercial or non-Equipment software, use of any other tips on the Equipment other than TECAN Tips, or acts of God, fire, flood, earthquake, or other natural causes.
 2. Routine tasks, other than those performed by Contractor during preventative maintenance visits, covered in the operator's or user's manual, such as cleaning and maintenance.
 3. Supply items (including, but not limited to, those items listed in the package insert or manual as "materials required but not provided," TECAN Tips, bleach, squirt bottles, paper towels, and other such items that are needed for general use but not specifically by the Equipment) and consumable items.
 4. Relocation of Equipment.
Note: Labor and materials charges for all of the excluded services will be billed at rates prevailing at the time of service.
- d. **CUSTOMER OBLIGATIONS.** Prior to any shipment of repair parts or visit by Contractor service representative, Customer must perform all pertinent diagnostic programs, tests, simple/ basic troubleshooting and provide an accurate description of the failure/error.
- e. **REPLACED OR REMOVED PARTS.** All parts replaced or removed under this Agreement become the property of Contractor.
4. **Order Management**
Customer shall place all orders concerning this Attachment directly with Contractor, at 250 Campus Drive, Marlborough, MA 01752. **Orders may be placed by: Phone at 800-442-9892, Fax at 800-409-7591 or at CustomerSupport@hologic.com**
5. TECAN tips (catalog # 10612513) are the only tips that Contractor has validated for use on the Equipment. Contractor does not support the use of non-TECAN tips on the Equipment as stated in the Equipment Operator's Manual and pursuant to the terms of the warranty for the Equipment. TECAN tips (catalog #10612513) can be directly ordered from TECAN U.S. at 800-352-5128.
6. **Term Completion.** At the end of the Term, Customer agrees to arrange the return of any Contractor-owned Equipment promptly to Contractor.

Purchase Commitment - Panther:

The Customer agrees to pay to Contractor the price per kit as indicated in the Purchase Commitment section during the Term. Customer agrees to purchase enough kits to run the number of tests listed under the Annual Minimum Commitment column ("Purchase Commitment"), each year for the duration of the Agreement. The Parties agree that the Annual Minimum Commitment represents the minimum quantity to be purchased by Customer on an annual basis. All purchases made in a given annual period shall apply to the purchase commitment for that annual period only and shall not be applied to any future Contract Year. Each twelve (12) month period beginning on the Effective Date is a "Contract Year." Products not subject to the Purchase Commitment, as indicated by "N/A" below, may be ordered by Customer on an as needed basis. If Customer does not order and pay for the quantity listed for each Product Category ("Estimated Yearly Quantity") within any 12 month period ("Minimum Purchase Obligation"), then Contractor

may require Customer to pay, at the end of the 12 month period, the difference between the Minimum Purchase Obligation and the amount actually paid by Customer during that period for the Product ("Minimum Purchase Obligation Payment"). Customer must make this Minimum Purchase Obligation Payment within 30 days of the date of Contractor's invoice. Contractor's use of the remedies in this section does not preclude it from pursuing remedies stated elsewhere in the Agreement.

Purchase Commitment:

Product Category	Annual Minimum Commitment (Quantity of Tests per Contract Year)	Product #	Description	Quantity of Tests per Kit	Price per Kit
CT-NG	5,000 Tests	302923	Aptima Combo 2, Kit – Panther	100 tests	\$950.00

Panther Non-Committed Supplies:

Product Number	Description	Price/Kit
301041	Kit APTIMA COMBO 2 Swab Spec Coll	\$62.50
301040	Kit APTIMA COMBO 2 Urine Spec Coll	\$62.50
PRD-03546	Aptima Multitest Swab Collection	\$62.50
301154C	Kit, APTIMA LPT-IVD Sales BOM	\$120.00
105575	APTIMA Urine Collection Tubes	\$120.00
301110	APTIMA Cntrl's Kit (1 tray) IVD)	No Charge
303096	Run Kit, Panther	No Charge
303085	Advanced Cleaning Solution	No Charge
CL0041	Caps, AMP/P.R.S.(CL0045)DIAG.	No Charge
CL0040	Caps, TCR/SEL.(CL0038)DIAG.	No Charge
501604	Spare Caps, PP, 60mL, TCR APTIMA 2x50	No Charge
501616	Spare Caps, 30mL tube (501213)Diagnostics	No Charge
105668	APTIMA PENETRABLE CAPS	No Charge
302101	Kit, Bleach Enhancer/Cleaning	\$50.00

Panther Equipment:

Product#	Description	Quantity	Serial # (if already on-site)	Quantity to Ship
303095	Panther Instrument System, DX	1	2090000680	0

Additional Terms:

1. Use Restrictions. Products are only intended for the uses listed in the applicable operator's manual or instructions for use and are subject to the specifications and requirements set forth therein. Customer assumes all risks associated with non-listed uses of Products and/or use of Products which is inconsistent with the specifications and requirements applicable to such Products. Customer is not licensed to, and agrees not to: (a) resell any Product, unless otherwise authorized by Contractor in writing; (b) transfer, or distribute any Product, directly or indirectly, to any third party for any purpose or use, except as otherwise approved by Contractor in writing; (c) use or allow anyone to dilute any Product; or (d) reverse engineer, disassemble, or conduct unauthorized analysis of any Product and/or its method of use.

2. Warranties. Except as otherwise expressly stated in this Agreement: (i) Equipment manufactured by Contractor is warranted to the original Customer to perform substantially in accordance with published product specifications for one (1) year starting from the date of receipt of the Products by Customer, or if Installation is required, from the date of Installation ("Warranty Period"); (ii) replacement parts and remanufactured items are warranted for the remainder of the Warranty Period or ninety (90) days from receipt, whichever is longer; (iii) consumable Supplies are warranted to conform to published specifications for a period ending on the expiration date shown on their respective packages; (iv) licensed Software is warranted to operate in accordance with published specifications; (v) Services are warranted to be supplied in a workman-like manner; (vi) non-Contractor manufactured Equipment is warranted through its manufacturer and such manufacturer's warranties shall extend to Contractor's customers, to the extent permitted by the manufacturer of such non-Contractor manufactured Equipment. Contractor does not warrant that use of Products shall be uninterrupted or error-free, or that Products shall operate with third-party products not authorized or validated by Contractor.

3. Warranty Claims and Remedies. In the event of any warranty claim, Contractor shall replace with new or remanufactured items any Equipment, part, component, or consumable supply that is in breach of warranty, and shall use reasonable efforts to promptly fix or provide a workaround for any Software defect or bug which prevents operation in substantial conformity with functional specifications. Alternatively, Contractor may elect to repay or credit to Customer an amount equal to the purchase price of the defective Equipment, component, Software, consumable supply, or Service. Items replaced shall become Contractor property. Contractor must be given reasonable access and an opportunity to inspect all associated materials...THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO, NOR MAY IT BE RELIED UPON BY, ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY ENTITY WHO IS NOT AN AFFILIATE OF CUSTOMER. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. CUSTOMER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY, FROM STATE TO STATE. These warranties do not apply to any item that is: (a) repaired, moved, or altered other than by Contractor authorized service personnel; (b) subjected to physical (including thermal or electrical) abuse, stress, or misuse; (c) stored, maintained, or operated in any manner inconsistent with applicable Contractor specifications or instructions, including Customer's refusal to allow Contractor recommended Software upgrades; or (d) designated as supplied subject to a non-Contractor warranty or on a pre-release or "as-is" basis.

4. 4. LIMIT OF LIABILITY. EXCEPT FOR DAMAGE TO PROPERTY, PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM CONTRACTOR'S NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, CONTRACTOR IS NOT LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, SERVICE OR USE OF PRODUCT ORDERED OR FURNISHED PURSUANT TO THIS AGREEMENT, OR FROM ANY CAUSE RELATING THERETO UNLESS EXPRESSLY AGREED TO BY THE PARTIES IN WRITING.

**RIDER B
TERMS AND CONDITIONS**

- 1. DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
 - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
 - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
 - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
 - d. The term “Division” or “Customer” shall refer to the State of Maine Division of Purchases.
 - e. The term “Contractor”, “Vendor”, “Hologic” or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
 - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.
- 2. WARRANTY:** The Contractor warrants the following:
 - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
 - b. That all goods and services covered by this Contract will conform to Contractor’s published product specifications, , and
 - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
 - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
 - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. In accordance with Rider A, Section 3, the Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

- 3. TAXES:** Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

4. PACKING AND SHIPMENT: Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY: Delivery should be materially in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule and there is no cure by Contractor after written notice, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

6. FORCE MAJEURE: The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

7. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, may reject any article or work not in conformity with Contractor's published product specifications. Contract will replace with new or remanufactured items any product that is in breach of warranty in accordance with Rider A, Section 3.

8. INVOICE: The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order

is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

9. ALTERATIONS: The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreement, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

10. TERMINATION: The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein and after written notification there is no cure by Contractor, or
- b. If Contractor fails to deliver specified materials or services and after written notification there is no cure by Contractor, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed because of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

11. NON-APPROPRIATION: Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement. Notwithstanding the foregoing, the State shall pay Contractor for all products ordered and shipped under this Agreement.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and

records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

13. INTERPRETATION: This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

14. DISPUTES: The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

15. ASSIGNMENT: None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

16. STATE HELD HARMLESS: The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

17. SOLICITATION: The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

18. WAIVER: The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right

hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

19. MATERIAL SAFETY: All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

20. COMPETITION: By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

21. INTEGRATION: All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

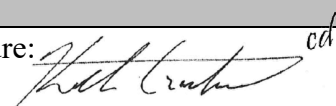
Debarment, Performance, and Non-Collusion Certification

By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
 - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
 - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
 - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
 - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
- c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

- **Failure to provide this certification may result in the disqualification of the Bidder's proposal, at the discretion of the Department.**

To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.

Name: Gen-Probe Sales & Service, Inc., a subsidiary of Hologic, Inc.	Title: Keith Gantner, SVP, Commercial, Diagnostics Solutions
Authorized Signature: 	Date: 6/11/2020

State of Maine Waiver of Competitive Bidding Request Form

Form Instructions: Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

DHHS/DCM Contract Administrator:	Chris Moiles	Office/Division/Program of Contract Administrator:	DHHS, MeCDC, DS, HETL
Est. Contract Amount:	\$187,760	Contract or RQS Number:	RQS 10A 20190806*0168
		Purchasing Maine ID:	
		DHHS Agreement Number:	CD0-20-54MA21
Proposed Start Date:	11/1/2019	Proposed End Date:	10/31/2022
Vendor/Provider Name, City, State	Gen-Probe (Hologic) Sales and Services, C/O Hologic, 250 Campus Drive, Marlborough, MA 01752 (800) 442-9892		
Short Description of Good or Service:	Three-Year Master Agreement for supplies and reagents.		
Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.		To be completed by the Division of Procurement Services Posting dates on Division of Procurement Services website: From: <u>12/5/2019</u> To: <u>12/11/2019</u>	
Notice of Intent to Waive Competitive Bidding Number:		NOI# 1220191974	
1. Statutory Justification State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.			
	A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;		
	B. The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;		
	<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>	<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> Signature:	
		Printed Name:	Date:
X	C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;		
	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;		
	E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;		
	<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i>		
	F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;		

State of Maine Waiver of Competitive Bidding Request Form

	<p>G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.</p>
	<p>If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:</p>
<p>Please note that the following four points below (#2 through 5) <u>all</u> require a response.</p>	
<p>2. Description of Specific Need Please identify, and fully describe, the specific problem, requirement, or need the resulting non- competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.</p>	
<p>Nucleic Acid Testing is a highly technical technique requiring dedicated staff, laboratory space, hardware and software. Our testing for chlamydia (CT) and gonorrhea (GC) currently uses the Panther APTIMA by Gen-Probe/Hologic. This automated instrument requires FDA-approved supplies and reagents that cannot be supplied by other companies. CT/GC can be performed from one sample collected at the time of the patient visit. This is a convenience that our clients have requested repeatedly over the past several years. The HETL provides testing for many hospitals, physicians' offices, school-based health centers, and other laboratories. Maintaining this instrument greatly increases the efficiency of diagnosis and reporting test results to the provider expeditiously.</p>	
<p>3. Availability of other Public Resources Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.</p>	
<p>There are no state resources available to provide this service.</p>	
<p>4. Cost Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are fair and reasonable.</p>	
<p>Gen-Probe/Hologic owns the Panther instrument, therefore performs routine maintenance at no cost. By having a reagent rental as opposed to owning the instrument, HETL does not incur the cost of an annual service agreement for this instrument. The cost of supplies and reagents for the Panther instrument has remained static for several years. The alternative to this continued use of the current testing instrumentation would be the purchase of an entirely new system which would cost tens of thousands of dollars more, just in capital equipment alone. There would also be a loss of income due to the purchase of unique reagents and consumables, and lost staff time due to training and validation of the new system. During this down time when systems would be exchanged, the state of Maine would be without these diagnostic tests.</p>	
<p>5. Future Competition Please describe potential opportunities which may be available to foster competition for these goods or services in the future.</p>	
<p>The department does not intend to RFP these services.</p>	
<p>Please note that <u>only one</u> of the two points below ("Uniqueness" or "Timeframe") requires a response. Requesting Departments are not required to respond to both points.</p>	

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6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

The Panther instrument requires a trained technician, provided by Gen-Probe/Hologic, to perform routine maintenance and upgrades to the software. State employees are not properly trained to service this machine. FDA regulated tests require specific reagents and supplies to perform the current test menu. (FDA Analyte specific reagents: 21 CFR 809.10(e), 809.30, and 864.4020 21 CFR 864.4020) Reagents and supplies must be purchased through Gen-Probe/Hologic to honor their rental agreement.

7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)


Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

N/A

**Signature of requesting
Department's Commissioner
or Chief Executive
(or designee within the
Commissioner's Office):**

*By signing below, I signify that my Department requests, and I approve of, this
Waiver of Competitive Bidding.*

Printed Name:


Ben Mann

Date:

12/2/19