

**RESOLUTION AUTHORIZING EXECUTION OF AN AMENDMENT BETWEEN
FORSYTH COUNTY AND GEN-PROBE SALES & SERVICE, INC., SUBSIDIARY
OF HOLOGIC, INC., TO PROVIDE COVID-19 TEST KITS, COLLECTION SWABS
AND OTHER TESTING SUPPLIES REQUIRED TO COMPLETE COVID-19 TESTING,
FOR USE AT THE FORSYTH COUNTY
DEPARTMENT OF PUBLIC HEALTH LABORATORY
(FORSYTH COUNTY DEPARTMENT OF PUBLIC HEALTH)**

WHEREAS Forsyth County has established a need for COVID-19 testing and Forsyth County Department of Public Health has the ability to complete these tests at the Forsyth County Department of Public Health's Laboratory on Panther Instrumentation;

WHEREAS the Federal Drug Administration has provided Emergency Use Authorization of COVID-19 testing utilizing the Panther Instrumentation;

WHEREAS Hologic, Inc., is the sole provider that has material reagents required to perform testing using the Hologic Panther and Gen-Probe Sales & Service, Inc., a subsidiary of Hologic, Inc., provides collection kits, test kits and supplies required to perform COVID-19 testing using Panther Instrumentation;

WHEREAS this amendment shall increase the payment by \$211,450 making the total payment an amount not to exceed \$406,450; and

WHEREAS it is the recommendation of the County Manager, Assistant County Manager, and the Public Health Director that Forsyth County enter into an amendment with Gen-Probe Sales & Service, Inc., to fulfill the terms of the agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Forsyth County Board of Commissioners that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, an amendment with Gen-Probe Sales & Service, Inc., subsidiary of Hologic, Inc., as a sole source provider, which is attached hereto and incorporated herein by reference, with a revised amount not to exceed \$406,450, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval to form and legality by the County Attorney.

Adopted this 28th day of May 2020.

NORTH CAROLINA

AMENDMENT TO AGREEMENT

FORSYTH COUNTY

THE AGREEMENT, made and effective on July 1, 2019, by and between Forsyth County, North Carolina (the "County") and Gen-Probe Sales & Service, Inc., subsidiary of Hologic, Inc. (the "Provider"), is hereby amended, effective June 4, 2020, by the County and the Provider as follows:

Section 1 of the Agreement is hereby deleted, and the following shall be added as Section 1:

Provider shall provide reagents and supplies to the County in accordance with the Equipment Usage Program Attachment (Attachment 1) and the terms of the Agreement. Furthermore, the provider agrees to provide use of the Panther instrumentation, remote support, and onsite technical support, preventive maintenance and shipping of all reagents and supplies associated with The Panther instrumentation at no additional cost to the County as detailed in the Attachment 1. Further, the Provider agrees to provide, based on availability, up to 7,000 COVID test kits (\$7,000/kit, \$28/test) and 7,000 swabs (\$1.25 each), and 7,000 controls at \$230/kit required to perform COVID-19 tests using the existing Panther instrumentation.

Section 3 of the Agreement is hereby deleted, and the following shall be added as Section 3:

As full compensation for Provider's services, reagents and supplies, the County agrees to pay the Provider the sum of \$600 per Trichomoniasis test kit, \$754 per (Aptima Combo 2) Chlamydia and Gonorrhea test kit, \$7,000 per COVID 19 test kit, and all other products listed in the Equipment Usage Program of ("Attachment 1") of the Agreement, payable within 30 days of invoice date and shall have a fifteen (15) day grace period ("Grace Period") to submit payments. Total payments under this contract are not to exceed \$406,450.

Except as herein amended, the Agreement attached as Attachment 2 and incorporated herein by reference remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the County and the Provider have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: _____
J. Dudley Watts, Jr, County Manager

Date: _____

ATTEST:

Ashleigh M. Sloop, Clerk to the Board

Date: _____

PROVIDER

(SEAL)

By: _____

Printed Name: _____

Title: _____

Date: _____

Attachment 1
EQUIPMENT USAGE PROGRAM ATTACHMENT

Terms:

1. **Equipment:** In consideration of the Purchase Commitment, Hologic shall provide Customer with the use of the Equipment (“Equipment”) specified below for the Term, which shall include on-site installation and training by Hologic authorized personnel. Hologic 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 Hologic immediately if any attachment, encumbrance, lien or security interest is filed or claimed and will indemnify Hologic for any loss or damage, including reasonable attorneys’ fees. Customer shall remain responsible for the normal care and maintenance of the Equipment. Should Customer be in Material Breach, Hologic may immediately require Customer to arrange the return of any Hologic-owned Equipment to Hologic.
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 Hologic’s prior written consent. If Customer requires the Equipment to be relocated, Customer agrees to contact Hologic’s service department to make arrangements for Hologic 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 Hologic 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 Hologic travel expenses.
 2. Preventative maintenance by Hologic 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 Hologic Technical Support telephone support, Monday through Friday, 5:00 AM to 5:00 PM Pacific Standard Time (excluding Hologic 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 Hologic when instructed by Hologic 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 Hologic 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 Hologic 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 Hologic 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 Hologic.

4. **Order Management**

Customer shall place all orders concerning this Attachment directly with Hologic, 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 Hologic has validated for use on the Equipment. Hologic 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 Hologic-owned Equipment promptly to Hologic.

Purchase Commitment - Panther:

The Customer agrees to pay to Hologic 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 Hologic 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 Hologic's invoice. Also, Hologic may increase pricing by up to 5% for the rest of the Term for any Product for which Customer does not meet the Minimum Purchase Obligation. Hologic'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
AC2 Tests	11,040 tests	303094	Aptima Combo 2, Kit – Panther	250 tests	\$1,885.00
		302923	Aptima Combo 2, Kit – Panther	100 tests	\$754.00
ATV Tests	2,400 tests	303537	ATV-V2, Kit -Panther	250 tests	\$1,500.00
		303536	ATV-V2, Kit -Panther	100 tests	\$600.00
	11,040 collections	301041	Kit APTIMA COMBO 2 Swab Spec Coll	50 collections	\$62.50

Product Category	Annual Minimum Commitment (Quantity of Tests per Contract Year)	Product #	Description	Quantity of Tests per Kit	Price per Kit
Collection Devices		301040	Kit APTIMA COMBO 2 Urine Spec Coll	50 collections	\$62.50
		105575	APTIMA Urine Collection Tubes	100 collections	\$120.00
		301154C	Kit, APTIMA LPT-IVD Sales BOM	100 collections	\$120.00
		PRD-03546	Aptima Multitest Swab Collection	50 collections	\$62.50

Panther Non-Committed Supplies:

Product Number	Description	Price/Kit
Assays		
303585	Aptima HPV, Kit – Panther, 250 Tests	\$4,250.00
303570	Aptima HPV, Kit – Panther, 100 Tests	\$1,700.00
Calibrators and Controls		
301110	APTIMA Cntrls Kit (1 tray) IVD	No Charge
302807	Kit, Controls, ATV, 250	No Charge
303010	KIT,HPV,APTIMA, Calibrators, IVD	No Charge
303011	APTIMA HPV Controls Kit (US)	No Charge
303235	APTIMA HPV 16 18/45 Cals,IVD	No Charge
Miscellaneous		
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	\$100.00

SARS-CoV-2 testing:

Product Number	Description	Price/Kit
Assays		
PRD-06419**	APTIMA, SARS-COV-2 ASSAY, 250-TEST, EUA, CE IVD	\$7,000.00
Calibrators and Controls		
PRD-06420	APTIMA, SARS-COV-2 ASSAY CONTROLS, EUA, CE IVD	\$230.00
Miscellaneous		
PRD-04339	SPECIMEN LYSIS, FUSION, CE IVD (100 tubes per bag)	\$125.00
*PRD-03836	UNIVERSAL PANEL A (Qty 1 tray)	No Charge
*PRD-06506	SARS-COV-2 ASSAY PANEL C, APTIMA (Qty 1 tray)	\$260.00

*Only required for the initial instrument implementation verification of the above Aptima SARS CoV-2 assay.

**The U.S. Food and Drug Administration (FDA) has issued an Emergency Use Authorization (EUA) to authorize the use of the Aptima SARS CoV-2 assay on the Panther System by authorized laboratories for the detection of nucleic acid from SARS-CoV-2 virus only and not for any other viruses or pathogens. The Aptima SARS CoV-2 assay is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostic tests for detection and/or diagnosis of COVID-19 under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner. The Aptima SARS CoV-2 assay has not been FDA cleared or approved. The Customer acknowledges and agrees that the Aptima SARS CoV-2 assay is only available for sale and use while the EUA is in effect. Hologic reserves the right to discontinue the Aptima SARS CoV-2 assay product at any time.

Please note: Product shipments shall depend on availability. Given the rapidly escalating worldwide demand for SARS-CoV-2 testing, Hologic is unable to provide specific dates for delivery. Upon receipt of a Purchase Order, your Hologic team will provide the latest information available and collaboratively work on a potential timeline for delivery.

Panther Equipment:

Product #	Description	Quantity	Serial # (if already on-site)	Quantity to Ship
303095	Panther Instrument System, DX	1	2090001000	0
902568	PRO360° Remote Diagnostics Management	1	N/A	0

Additional Provisions:

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, and Customer hereby indemnifies and holds Hologic harmless from any claim associated with any such uses. Customer is not licensed to, and agrees not to: (a) resell any Product, unless otherwise authorized by Hologic 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 Hologic 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. Warranty terms for Aesthetic Equipment shall be as provided in the applicable paperwork accompanying the Product. Except as otherwise expressly stated in this Agreement: (i) Equipment manufactured by Hologic is warranted to the original Customer to perform substantially in accordance with published product specifications for one (1) year starting from the date of shipment, 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 shipment, 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-Hologic manufactured Equipment is warranted through its manufacturer and such manufacturer's warranties shall extend to Hologic's customers, to the extent permitted by the manufacturer of such non-Hologic manufactured Equipment. Hologic 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 Hologic.

3. Warranty Claims and Remedies. Warranty terms for Aesthetic Equipment shall be as provided in the applicable paperwork accompanying the Product. In the event of any warranty claim, Hologic shall replace with new or remanufactured items any Medical 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, Hologic may elect to repay or credit to Customer an amount equal to the purchase price of the defective Medical Equipment, component, Software, consumable supply, or Service. Items replaced shall become Hologic property. All claims shall be initiated by contacting Hologic within the applicable Warranty Period and thirty (30) days after discovery of the breach or non-conformity. Hologic must be given reasonable access and an opportunity to inspect all associated materials. If Customer has not notified Hologic within one (1) year after the claim arises, Customer shall be barred from instituting any legal action against Hologic thereafter. These remedies shall comprise Hologic's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity. HOLOGIC'S ENTIRE WARRANTY RESPONSIBILITY IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (AT HOLOGIC'S OPTION AND IN THE FORM ORIGINALLY SHIPPED) OF PRODUCT OR CORRECTION OF SERVICE SUBJECT TO ANY CLAIM, OR, AT HOLOGIC'S ELECTION, REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE HOLOGIC PRICE, FEE OR CHARGE THEREFOR. 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 Hologic 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 Hologic specifications or instructions, including Customer's refusal to allow Hologic recommended Software upgrades; or (d) designated as supplied subject to a non-Hologic warranty or on a pre-release or "as-is" basis.

STATE OF NORTH CAROLINA

AGREEMENT

FORSYTH COUNTY

THIS AGREEMENT, made and effective this 1 day of July 2019, by and between Forsyth County, North Carolina (the "County"), and Gen-Probe Sales & Service, Inc., subsidiary of Hologic, Inc. (the "Provider");

For the purpose and subject to the terms and conditions hereinafter set forth, the County and the Provider hereby agree as follows:

1. **Services.** Provider shall provide reagents and supplies to the County in accordance with the Equipment Usage Program Attachment ("Attachment 1") and the terms of the Agreement. Furthermore the provider agrees to provide use of the Panther Instrumentation, remote support, onsite technical support, preventive maintenance and shipping of all reagents and supplies associated with The Panther Instrumentation at no additional cost to the County as detailed in the Attachment 1.
2. **Term.** The services of the Provider shall begin on July 1, 2019, and shall be provided until June 30, 2020; provided that the County shall have the right to terminate this Agreement, with cause, upon 30 days' notice in writing to the other party, or upon 7 days written notice if the Provider breaches the Agreement. The agreement shall auto-renew for one successive period of twelve months (July 1, 2020 - June 30, 2021).
3. **Compensation.** As full compensation for the Provider's services, reagents and supplies, the County agrees to pay the Provider the sum of \$600 per Trichomoniasis test kit and \$754 per (Aptima Combo 2) Chlamydia and Gonorrhea test kit and all other products listed in the Agreement, payable within 30 days of invoice date and shall have a fifteen (15) day grace period ("Grace Period") to submit payments. Total payments under this contract are not to exceed \$195,000. Amounts that exceed this amount require an amendment.

There shall be no additional cost to the County for use of the Panther Instrument, remote support, onsite technical support, preventive maintenance, and shipping of all reagents and supplies.

4. **Independent Contractor.** The Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider's acts or omissions. The Provider, its employees, and subcontractors shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. Neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Provider or the employees of the Provider. The Provider is fully

responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The Provider shall comply with the North Carolina Workers' Compensation Act and shall ensure that its subcontractors also comply. The Provider shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County. The Provider has no authority to enter into contracts or agreements on behalf of the County. The County shall not be liable to the Provider for any expenses paid or incurred by the Provider unless otherwise agreed in writing. The Provider shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

5. **Indemnification.** The Provider agrees to indemnify, defend, and hold the County harmless from and against any and all third party claims, expenses (including attorney fees), costs or liability for acts or omissions of the Provider relating to this Agreement or the services provided pursuant to it.
6. **Insurance.** The Provider shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate.
7. **County Property.** Provider agrees that it shall be responsible for the proper custody and care of any property furnished to it by the County for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. Any information, data, documents, studies, or reports given to or prepared or assembled by the Provider under this Agreement shall be kept confidential and not divulged or made available to any individual or organization without prior written approval of the County.
8. **Notice.** All notices permitted or required to be given by one party to the other party shall be addressed and delivered in writing as follows:

For the County:
Ronda D. Tatum | Deputy County Manager
Forsyth County Manager's Office
201 North Chestnut St, Winston-Salem, NC 27101-4120
Phone: 336.703-2013
email: tatumrd@forsyth.cc

For the Provider:

Contracts Department
250 Campus Drive, Marlborough, MA 0175210210
DxContracts@hologic.com

9. **Assignment.** The Provider may not assign its obligations under this Agreement unless it has received prior written approval from the County, provided, however,

that, Provider may assign the Agreement without County's consent (a) to an affiliate of Provider or (b) in connection with the transfer or sale of all or substantially all of Provider's business to which this Agreement relates to any third party whether by merger, stock sale, sale of assets or otherwise.

10. **Waiver.** No action or failure to act by the County shall constitute a waiver of any of its rights or remedies or as approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
11. **Governing Law.** This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply. The venue for any legal proceeding shall be in Forsyth County, North Carolina.
12. **Nonappropriation.** Notwithstanding anything to the contrary herein, in the event that public funds are unavailable and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the County 30 days after written notice of the unavailability and non-appropriation of public funds. In the event of a change in the County's statutory authority, mandate, or mandated functions by state or federal legislative or regulatory actions, which adversely affects the County's authority or duty to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the County 30 days after written notice of such limitation or change in the County's legal authority or duty.
13. **Survival of Provisions.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of services and termination of this Agreement.
14. **Modification.** This Agreement may only be modified in writing and signed by both the Provider and by the County Manager or other authorized County official.
15. **Miscellaneous.** The Provider shall comply with all applicable laws and regulations including but not limited to federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement and all federal immigration laws in its hiring and contracting practices. Provider and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Provider to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. Provider hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will Provider utilize for this Agreement any

subcontractor on such lists. This agreement is intended for the benefit of the County and the Provider and not for any other party. If any provision of this Agreement shall be unenforceable, the remainder of the Agreement shall be enforceable to the extent allowed by law.

IN WITNESS WHEREOF, the authorized officials of the County and the Provider have set their hands and seals as of the day and year first above written.



FORSYTH COUNTY, NORTH CAROLINA

By: Randy D. Galtman 7/17/2019
for J. Dudley Watts, Jr, County Manager

Date: 7/18/19

ATTEST:

Ashleigh M. Sloop
Ashleigh M. Sloop, Clerk to the Board

Date: 7-18-19

PROVIDER

(SEAL)

By: Keith Gantner ^{cd}

Printed Name: Keith Gantner
Title: SVP, Group Sales & Commercial Excellence
Date: 7/10/19

...

Attachment 1
EQUIPMENT USAGE PROGRAM ATTACHMENT

Terms:

1. **Equipment:** In consideration of the Purchase Commitment, Hologic shall provide Customer with the use of the Equipment ("Equipment") specified below for the Term, which shall include on-site installation and training by Hologic authorized personnel. Hologic 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 Hologic immediately if any attachment, encumbrance, lien or security interest is filed or claimed and will indemnify Hologic for any loss or damage, including reasonable attorneys' fees. Customer shall remain responsible for the normal care and maintenance of the Equipment. Should Customer be in Material Breach, Hologic may immediately require Customer to arrange the return of any Hologic-owned Equipment to Hologic.
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 Hologic's prior written consent. If Customer requires the Equipment to be relocated, Customer agrees to contact Hologic's service department to make arrangements for Hologic 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 Hologic in writing.
3. **Panther Service.**
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 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 Hologic travel expenses.
 2. Preventative maintenance by Hologic 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 Hologic Technical Support telephone support, Monday through Friday, 5:00 AM to 5:00 PM Pacific Standard Time (excluding Hologic 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 Hologic when instructed by Hologic 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 Hologic 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 Hologic 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 Hologic 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 Hologic.

4. Order Management

Customer shall place all orders concerning this Attachment directly with Hologic, 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 Hologic has validated for use on the Equipment. Hologic 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. **Termination of Prior Agreement.** The Parties agree and acknowledge that the Panther Reagent Purchase and System Loan Agreement between Customer and Hologic dated 1/16/14 ("Prior Agreement") shall be terminated from the Effective Date of this Attachment.
- 7. **Term Completion.** At the end of the Term, Customer agrees to arrange the return of any Hologic-owned Equipment promptly to Hologic.

Purchase Commitment - Panther:

The Customer agrees to pay to Hologic 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 Hologic 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 Hologic's invoice. Also, Hologic may increase pricing by up to 5% for the rest of the Term for any Product for which Customer does not meet the Minimum Purchase Obligation. Hologic'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
AC2 Tests	11,040 tests	303094	Aptima Combo 2, Kit - Panther	250 tests	\$1,885.00
		302923	Aptima Combo 2, Kit - Panther	100 tests	\$754.00
ATV Tests	2,400 tests	303537	ATV-V2, Kit -Panther	250 tests	\$1,500.00
		303536	ATV-V2, Kit -Panther	100 tests	\$600.00

Product Category	Annual Minimum Commitment (Quantity of Tests per Contract Year)	Product #	Description	Quantity of Tests per Kit	Price per Kit
Collection Devices	11,040 collections	301041	Kit APTIMA COMBO 2 Swab Spec Coll	50 collections	\$62.50
		301040	Kit APTIMA COMBO 2 Urine Spec Coll	50 collections	\$62.50
		105575	APTIMA Urine Collection Tubes	100 collections	\$120.00
		301154C	Kit, APTIMA LPT-IVD Sales BOM	100 collections	\$120.00
		PRD-03546	Aptima Multitest Swab Collection	50 collections	\$62.50

Panther Non-Committed Supplies:

Product Number	Description	Price/Kit
Assays		
303585	Aptima HPV, Kit – Panther, 250 Tests	\$4,250.00
303570	Aptima HPV, Kit – Panther, 100 Tests	\$1,700.00
Calibrators and Controls		
301110	APTIMA Cntris Kit (1 tray) IVD	No Charge
302807	Kit, Controls, ATV, 250	No Charge
303010	KIT,HPV,APTIMA, Calibrators, IVD	No Charge
303011	APTIMA HPV Controls Kit (US)	No Charge
303235	APTIMA HPV 16 18/45 Cals,IVD	No Charge
Miscellaneous		
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	\$100.00

Panther Equipment:

Product #	Description	Quantity	Serial # (if already on-site)	Quantity to Ship
303095	Panther Instrument System, DX	1	2090001000	0
902568	PRO360° Remote Diagnostics Management	1	N/A	0

Additional Provisions:

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, and Customer hereby indemnifies and holds Hologic harmless from any claim associated with any such uses. Customer is not licensed to, and agrees not to: (a) resell any Product, unless otherwise authorized by Hologic 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 Hologic 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.

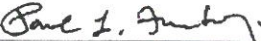
2. **Warranties.** Warranty terms for Aesthetic Equipment shall be as provided in the applicable paperwork accompanying the Product. Except as otherwise expressly stated in this Agreement: (i) Equipment manufactured by Hologic is warranted to the original Customer to perform substantially in accordance with published product specifications for one (1) year starting from the date of shipment, 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 shipment, 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-Hologic manufactured Equipment is warranted through its manufacturer and such manufacturer's warranties shall extend to Hologic's customers, to the extent permitted by the manufacturer of such non-Hologic manufactured Equipment. Hologic 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 Hologic.

3. **Warranty Claims and Remedies.** Warranty terms for Aesthetic Equipment shall be as provided in the applicable paperwork accompanying the Product. In the event of any warranty claim, Hologic shall replace with new or remanufactured items any Medical 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, Hologic may elect to repay or credit to Customer an amount equal to the purchase price of the defective Medical Equipment, component, Software, consumable supply, or Service. Items replaced shall become Hologic property. All claims shall be initiated by contacting Hologic within the applicable Warranty Period and thirty (30) days after discovery of the breach or non-conformity. Hologic must be given reasonable access and an opportunity to inspect all associated materials. If Customer has not notified Hologic within one (1) year after the claim arises, Customer shall be barred from instituting any legal action against Hologic thereafter. These remedies shall comprise Hologic's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity. HOLOGIC'S ENTIRE WARRANTY RESPONSIBILITY IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (AT HOLOGIC'S OPTION AND IN THE FORM ORIGINALLY SHIPPED) OF PRODUCT OR CORRECTION OF SERVICE SUBJECT TO ANY CLAIM, OR, AT HOLOGIC'S ELECTION, REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE HOLOGIC PRICE, FEE OR CHARGE THEREFOR. 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 Hologic 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 Hologic specifications or instructions, including Customer's refusal to allow Hologic recommended Software upgrades; or (d) designated as supplied subject to a non-Hologic warranty or on a pre-release or "as-is" basis.

Contract #2020-0119-00: Gen-Probe Sales & Service

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Date


Director of Finance

Approved as to Form and Legality


Assistant Forsyth County Attorney

7/17/2019

7/17/2019