

**STATE OF OHIO
OFFICE OF INFORMATION TECHNOLOGY
SOFTWARE
MASTER MAINTENANCE AGREEMENT-FISCAL YEAR 2007**

THIS CONTRACT is between the STATE OF OHIO, OFFICE OF INFORMATION TECHNOLOGY ("OIT"), INVESTMENT AND GOVERNANCE DIVISION, located at 30 East Broad Street, 40th Floor, Columbus, Ohio, 43215 ("Customer"), and PerkinElmer LAS, Inc. ("Contractor"), located at 710 Bridge Ave. Shelton, CT 06484.

DEFINITIONS

The following terms will have the meanings described below whenever they are used in this Contract:

- A. "Software" is software listed on Attachment A and the Equipment's operating system, word processing software, utilities, drivers, communication software and other manufacturer software options that are integrated with Contractor's systems. "Software" does not include compilers, development software or applications unless listed on Attachment A.
- B. An "Error" is a malfunction in the Software, excluding all external factors, that prevents the Software from conforming to applicable manufacturer's specifications.
- C. An "Update" is a software release that manufacturer has made generally to all customers and that replaces or modifies a prior software release to correct errors or omissions.
- D. An "Upgrade" is a software release that the manufacturer has made generally available to all customers that include enhancements, options or new features that improve the Software's performance.
- E. "Equipment" means the hardware and items other than Software listed on Attachment A.
- F. The term of this Contract is from **July 1, 2006** ("Commencement Date") to **June 30, 2007** ("Expiration Date").

1. MAINTENANCE SERVICE RESPONSIBILITIES OF CONTRACTOR

For charges stated on any attached schedule (the "Charges"), Contractor will furnish the following service (the "Maintenance") under the terms and conditions of this Contract.

- A. Contractor will provide maintenance services to those sites designated by Customer in the attachments during the term of this Contract.
- B. Telephone Support. Contractor will provide reasonable technical telephone consultation concerning the use of any Updates and Upgrades to all such sites.
- C. New Releases. From time to time Contractor may modify or enhance the Software by a new release of the Software. In such case, Contractor may provide the Customer one copy of every new release of the Software listed in the attached schedules, including all modifications, enhancements and documentation.
- D. In accordance with Contractor's standard Terms and Conditions of Support attached hereto as Exhibit A, Contractor will correct errors or replace the Software in a reasonably expeditious manner after notification that a Software correction is required. Failure to comply with this requirement will result in deduction from the maintenance rate for each day the Software is inoperative, computed from the initial downtime notification. The deduction for an inoperative period consisting of a partial day will be prorated.
- E. Contractor will provide Maintenance for the then-current release and the immediately preceding release of the Software. Contractor will provide maintenance support for the immediately preceding release for at least six months after a new version is released. After this period Contractor may cancel the Maintenance Services for the immediately preceding release of the Software on sixty (60) days written notice.

2. **SERVICE AVAILABILITY PERIOD**

- A. The "Call Window" specified on any attached schedule is the time and days during which the Customer may notify Contractor that the Software is inoperative and during which Contractor will perform the on-site maintenance, excluding Customer and Contractor holidays.
- B. All software on a schedule will have the same Call Window.
- C. Repairs and replacements necessitated by any of the items excluded from coverage hereunder will be undertaken by Contractor only on Customer's written approval of estimated additional charges, Customer's Contract to pay the actual charges, and Customer's issuance of a purchase order.
- D. Annual maintenance will continue to be available for a minimum of five years after the effective date of this Contract under the same terms and conditions. The State will have the right to participate in the Licensor's annual maintenance program by giving the Licensor annual notice of its intent to do so or by paying the annual fee for the maintenance on or before the due date for the annual payment, but in no event more than sixty (60) days after the due date unless the State pays interest on the late payment in accord with the applicable provisions of the Ohio Revised Code. If the State fails to pay the annual maintenance fee or materially breaches this Contract, then, unless otherwise agreed, the State may not continue to participate in the maintenance program. The Licensor will bill the State annually for maintenance, 60 days in advance of the due date for the maintenance fees, at the Licensor's then-current rates for maintenance, subject to the limitation on increases provided below.
- E. The annual maintenance fee for the Software will not increase from year to year by more than ten percent over the prior year's annual maintenance fee.

4. **RESPONSIBILITIES OF CUSTOMER**

- A. Customer will provide Contractor's personnel reasonable access to the Software at mutually agreed upon times to perform maintenance services (including preventive maintenance). Customer will also provide adequate working space and facilities, including heat, light, ventilation, electric current and outlets and the like for use by Contractor personnel. All such facilities will be within a reasonable distance from the Equipment to be serviced and will be provided at no charge to Contractor.
- B. Customer will not perform, attempt to perform, nor cause to be performed, maintenance or repair to the Software during the term of this Contract except simple daily or weekly preventive maintenance on the Software as allowed or reasonably required by Contractor. Customer, at Contractor's request, will maintain the service reports issued by Contractor. Customer, at its own expense, will establish and maintain an environment consistent with the specifications furnished by Contractor for the Software.

5. **PAYMENT DUE DATE**

- A. Contractor will invoice Customer on the first day of each month (or each quarter or each year as designated on Equipment Schedule) during the term hereof for the unit amount for the Software specified on Attachment A. If the Commencement Date does not fall on the first day of the month, the amount of the first payment will be prorated based on the number of service days remaining in that month.
- B. Payments under this Contract will be due on the 30th calendar day after the later of:
 - 1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or
 - 2. The date the Service is delivered and accepted.
- C. The date of the warrant is issued in payment will be considered the date payment is made.

6. **CONTRACTOR QUARTERLY SALES REPORT**

The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract by calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.

The Contractor shall be required to report the quarterly dollar value of sales to the State on a form prescribed by OIT. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period.

The Contractor shall also submit a close - out report within one hundred and twenty (120) days after the expiration of this Contract. The contract expires upon the physical completion of the last, outstanding task or delivery order of the Contract. The close - out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close - out report.

The Contractor must forward the Quarterly Sales Report to the Following address:

Office of Information technology
OIT Business Office
30 East Broad Street, 39th Floor
Columbus, Ohio 43215 - 3414

If the Contractor fails to submit sales reports, falsifies sales reports or fails to submit sales reports in a timely manner the State may terminate or cancel this Contract.

7. **CONTRACTOR REVENUE SHARE**

The Contractor must pay the State a revenue share of the sales transacted under this Contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals .0075 of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering activities.

The Contractor must remit any monies due as the result of the close - out report at the time the close - out report is submitted to OIT.

The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the following information with the payment:

Applicable State Term Schedule Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:

Department of Administrative Services
Office of Finance
30 East Broad Street, Suite 4060
Columbus, Ohio 43215 - 3414

Please make check payable to: Treasurer, State of Ohio.

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off of payments or employ the remedies available under Ohio law for the non-payment of the revenue share

If the Contractor fails to pay the revenue share in a timely manner the State may terminate or cancel this Contract.

8. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** AS PART OF THIS AGREEMENT, CONTRACTOR SHALL DISCLOSE THE FOLLOWING:

- (1) The location(s) where all services will be performed; and
- (2) The location(s) where any state data applicable to the contract will be maintained or made available; and
- (3) The principal location of business for the contractor and all subcontractors.
PerkinElmer LAS 3985 Eastern Rd. Norton, OH 44203.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

9. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.**

Contractor warrants that it is not subject to an unresolved finding for recovery under ORC 9.24. If the warranty is deemed to be false on the date the parties sign this Contract, this Contract is void *ab initio*.

10. **GENERAL WARRANTIES**

The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will: (1) be in accordance with sound professional standards and the requirements of this Contract and without any defects; (2) unless otherwise provided in Attachment A, be the work of solely of the Contractor; and (3) no Software will infringe on the intellectual property rights of any third party.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that: (1) the Contractor has the right to enter into this Contract; (2) the Contractor has not entered into any other contracts or employment relationships that restrict that the Contractor's ability to perform the contemplated services; (3) the Contractor will observe and abide by all applicable laws and regulations, including those of the Customer regarding conduct on any premises under the Customer's control; (4) the Contractor has good and marketable title to any goods delivered under this Contract and in which title passes to the Customer; (5) the Contractor has the right and ability to grant the license granted in any Software in which title does not pass to the Customer; (6) the Contractor further warrants that the Software is merchantable and fit for its intended use.

The warranty regarding professionalism and material defects is a one-year warranty. All other warranties will be continuing warranties. If any portion of the Software fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for such portion of the Software. The Contractor will also indemnify the Customer for any direct damages and claims by third parties based on a breach of these warranties. This obligation of indemnification will not apply where the Customer has modified or misused the Software and the claim is based on the modification or misuse.

10.1 **SOFTWARE WARRANTY**

On delivery and for ninety (90) days after the date of acceptance of any Software, the Contractor warrants as to all Software developed under this Contract that: (a) the Software will operate on the computer(s) for which the Software is intended in the manner described in the relevant Software documentation, the Contractor's proposal, and Attachment A; (b) the Software installation media will be free of any material defects; (c) the Contractor will maintain relevant and complete Software documentation, commentary, and source code in a secure location; and (d) the source code language used to code the Software is available for escrow pursuant to Contractor's standard escrow arrangements and at Contractor's expense; and (e) the Software and all maintenance will be provided in a professional, timely, and efficient manner.

10.2 SOFTWARE MAINTENANCE

During the warranty period, set forth in Section 10.1 the Contractor will correct any material programming errors that are attributable to the Contractor within a reasonable period of time, provided that the Customer notifies the Contractor, either orally or in writing, of a problem with the Software and provides sufficient information for the Contractor to identify the problem.

The Contractor's response to a programming error will depend upon the severity of the problem and shall be as set forth in Contractor's standard Terms and Conditions of support attached hereto as Exhibit A.

10.3 PRINCIPAL PERIOD OF MAINTENANCE

Maintenance will be available eight working hours per weekday, between 9:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventive maintenance will not be considered billable but will be included in the Contractor's firm, fixed Fee for the Project during the warranty period and a part of the annual maintenance fee during later annual maintenance periods.

10.4 MAINTENANCE ACCESS

The Contractor will keep the Software in good operating condition during the warranty period and any annual maintenance period during which the Customer contracts for continued maintenance and the Customer will provide the Contractor with reasonable access to the Software to perform maintenance. All maintenance that requires the Software to be inoperable must be performed outside the Customer's customary working hours except when the Software is already inoperable.

11. INTEREST ON OVERDUE PAYMENTS

Section 126.30 of the Ohio Revised Code (the "Code") is applicable to this Contract and requires payment of interest on overdue payments for all proper invoices. The interest charge will be at the rate of interest on overdue payments for all proper invoices. The interest charge will be at the rate per calendar month, which equals one-twelfth of the rate per annum prescribed by Section 5703.47 of the Code.

12. INVOICE REQUIREMENTS

Invoices must be submitted in an original and three copies of the office designated in the purchase order "bill to address" to receive invoices. A proper invoice must include the following information and/or attached documentation:

- A. Name and address of business concern as designated in this Contract.
- B. Federal Tax Identification Number of business concern as designated in this Contract.
- C. Invoice remittance address as designated in this Contract.
- D. The purchase order number authorizing the delivery of equipment, materials, supplies or services.
- E. Description including time period, serial number when applicable, unit price, quantity and total price of equipment, materials, supplies or services actually delivered or rendered as specified in the purchase order. If the invoice is for lease purchase, the payment number, e.g., 1 of 36 must also be indicated.

13. IMPROPER INVOICES

If an invoice contains a defect or impropriety and/or it is not a proper invoice as defined in this section, a written notification and the improper invoice will be sent to the Contractor at the address designated for receipt of purchase orders within 15 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety. If such notification has been sent, the required payment date will be thirty (30) days after receipt of a proper invoice or product acceptance, whichever is later.

14. NON-APPROPRIATION OF FUNDS

Customer's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio Assembly fails at any time to continue funding for the payments due hereunder, this Contract will terminate as of the date that the funding expires without further obligation of the Customer. Since the current General Assembly cannot commit a future General Assembly to expenditure, if any term of this Contract crosses a State Biennium, this Contract will automatically expire at the end of the current biennium, which is June 30, 2007. **The State, however, may renew this Contract in the next biennium,**

by issuing written notice to the Contractor of the decision to do so. The expiration and renewal procedure will also apply to the end of any subsequent biennium during which the Contract continues.

15. **OBM CERTIFICATION**

This Contract is subject to Section 126.07 of the Code, which provides, in part, that orders under this Contract will not be valid unless the Director of the Office of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations.

16. **NOTIFICATION OF PRICE INCREASE**

Notice of any price increases for Maintenance or other charges, as allowed by this Contract, must be submitted to the purchase order bill to address no later than sixty (60) days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price and purchase order number.

17. **INDEMNITY**

The Contractor will indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of the performance of this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors. The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement is based on the modification. The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one, (1) of the following four (4) things:

- (1) Modify the Deliverable so that is no longer infringing.
- (2) Replace the Deliverable with an equivalent or better item.
- (3) Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
- (4) Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

18. **CONFIDENTIALITY**

The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor agrees to treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor agrees not to disclose any Confidential Information to third parties and to use it solely to perform under this Contract.

The State acknowledges that, in connection with this Agreement and its relationship with Contractor, it may obtain information relating to the Software or to Contractor that is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans or information which the State knows or has reason to know is confidential, proprietary or trade secret information of Contractor. The State shall at all times, both during the term of this Agreement and for a period of at least Five (5) years after its termination, keep in trust and confidence all such Confidential Information, and shall not use such

Confidential Information other than as expressly authorized by Contractor under this Agreement, nor shall the State disclose any such Confidential Information to third parties without Contractor's prior written consent.

The parties' obligation to maintain the confidentiality of the Confidential Information of the other will not apply where such: (1) was already in the possession of the Receiving Party before disclosure by the Disclosing Party, and was received by the Receiving Party without obligation of confidence; (2) is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Receiving Party from a third party without obligation of confidence; (5) is disclosed by the Receiving Party with the written consent of the Disclosing Party; or (6) is released under a valid order of a court or governmental agency, provided that the Receiving Party (a) notifies the Disclosing Party of the order immediately upon receipt of it and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production. The Receiving Party will return all originals of any Confidential Information and destroy any copies it has made for its own internal use on termination or expiration of this Contract or as requested by the Disclosing Party.

The parties agree that the disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party shall be entitled to temporary and permanent injunctive relief to enforce the provisions hereof without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

19. **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY LIMITATION PROVISIONS CONTAINED IN THE DOCUMENTS AND MATERIALS INCORPORATED BY REFERENCE INTO THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
2. THE CONTRACTOR FURTHER AGREES THAT THE CONTRACTOR SHALL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR.

20. **DELIVERIES**

All deliveries shall be F.O.B. Destination.

21. **HEADINGS**

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

22. **ASSIGNMENT**

Neither party will assign this Contract without the prior written consent of the other party.

23. **GOVERNING LAW**

This Contract will be governed by and construed in accordance with Ohio law.

24. **TAXES**

The Customer is exempt from all State and local taxes, and does not agree to pay any taxes.

25. **EXCUSABLE DELAY (FORCE MAJEURE)**

Neither party to this Contract will be responsible for failure to perform service due to causes beyond its control, including, but not limited to, work stoppages, fires, floods, civil disobediences, riots, rebellions acts of God and similar occurrences.

26. ENTIRE CONTRACT

This contract document contains the entire Contract between Contractor and Customer relating to maintenance service on the Software and supersedes any other Contracts, written or oral.

27. NOTICES

All notices, requests and other communications pursuant to this Contract will, unless otherwise provided herein, be in writing and will deemed to have been duly given on the date of service, if served personally, or three days after mailing, if mailed by first class mail, postage prepaid, to the address of the parties set forth in the attached Equipment Schedule.

28. SEVERABILITY

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and affect to the extent that such does not create an absurdity.

29. EQUAL EMPLOYMENT OPPORTUNITY

A. In carrying out this Contract, the Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, disability, age or Vietnam-era status ("Protected Status"). The Contractor will ensure that applicants are hired and that employees are treated during employment without regard to their Protected Status.

B. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Contractor complies with all applicable Federal and state non-discrimination laws. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to their Protection Status. Contractor will incorporate the requirements of this Section in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

30. DRUG FREE WORKPLACE

Contractor agrees to comply with all applicable state and Federal laws regarding drug-free workplace. Contractor will make a good faith effort to ensure its employees, while working on state property, will not possess or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

31. CERTIFICATION OF COMPLIANCE WITH OHIO ETHICS AND ELECTIONS LAW REQUIREMENTS FOR NONCOMPETITIVE BID CONTRACTS

A. Contractor by signature on this Contract certifies that Contractor is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws in Section 102.03 and 102.04 of the Code.

B. The Contractor affirms that, as applicable to the Contractor, no party listed in Division (I) or (J) of Section 3517.13 of the Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

TO SHOW THEIR AGREEMENT, the parties have executed this Contract. This Contract becomes effective either on the 1st day of July 2006, or in the alternative on the date of signature by the Customer.

This Contract may be renewed for another one-year term upon the written, mutual agreement of the parties.

ACCEPTED BY:

THE CONTRACTOR

ACCEPTED BY:

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES,
INVESTMENT AND GOVERNANCE DIVISION

By: John E. Warner Mary F. Carroll (YM)
Mary F. Carroll
Director, Ohio Office of Information Technology
State Chief Information Officer

Title: Americas Contacts Leader By: Luis Marquez

Date: 6/13/06 Date: 6-20-06

E-Mail Address johnwarner@penknelmer.com

Contractor Tax ID Number: 04-3361624

Revised: 08-09-05 11-3-05jpd

ATTACHMENT A
FISCAL YEAR 2007 EQUIPMENT SCHEDULE
TO THE MASTER MAINTENANCE CONTRACT
BETWEEN
THE STATE OF OHIO,

BY THE
DEPARTMENT OF ADMINISTRATIVE SERVICES,
INVESTMENT AND GOVERNANCE DIVISION
FOR

CUSTOMER

Contact: William McHugh

Phone: 614-752-9863 Fax: 614-752-

For:

Ohio Dept. of Health/Bureau Chief
Agency, Name/Title of Agency Contact

1571 Perry Street / Newborn Admin.
Address

Columbus, Ohio 43201
City, State, Zip

PERKIN ELMER LAS, INC., Agrees to provide the remedial and preventative maintenance described in the Master Maintenance Contract for the equipment (the "Equipment") listed below and (Customer") agrees to purchase such maintenance subject to the terms and conditions contained within the Master Maintenance Contract.

CONTRACTOR

Contact: Janet Perkins

Phone: 330-242-5312 Fax: 203-944-4914

Coverage Period: 07-01-06 thru 06-30-07

Coverage Amount: \$100,000/yr-maybe expansion that would increase maintenance costs

Agency P.O. Box #: _____

Soon to be: 8995 East Main Street
Building #22
Reynoldsburg, OH 43068

Billing Frequency

<u>Model Number</u>	<u>Serial Number</u>	<u>Description and Location</u>	<u>Qty</u>	<u>Unit Rate</u>	<u>Amount</u>
<u>The billing frequency is once per year in July.</u>					
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
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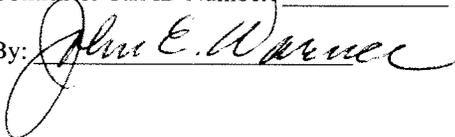
Total Charge \$ 83,021

For the Agency:

By: _____

For the Contractor:

Contractor Tax ID Number: 04-3361624

By: 



Specimen Gate[®] Terms and Conditions of Support

1. PerkinElmer's Software

The Software covered under this Agreement is as indicated in Attachment A to the Contract (hereinafter referred to as the "System").

2. Support Services

The Support Services will be performed during PerkinElmer's normal business hours, from 9:00 AM to 5:00 PM Eastern Time, Monday through Friday, except public, bank and other holidays observed by PerkinElmer. During the Support Term, PerkinElmer shall use its reasonable efforts to remedy any System Error (as defined in Section 4 below). Such Support Services shall be accomplished after the Customer has identified and notified PerkinElmer of any such System Error in accordance with PerkinElmer's reporting procedures outlined in Section 5 hereof.

New products, modules and add-ons that either change existing or add additional features and/or functionality to the System that are offered by PerkinElmer to its customers generally for an additional fee are NOT expressly included in the Support Services but may be included through a bi-lateral written agreement.

PerkinElmer's obligation to provide Support Services is contingent upon Customer: (a) making reasonable efforts to solve the System Error after consulting with PerkinElmer; (b) providing PerkinElmer with sufficient information and resources to correct the System Error; and (c) procuring, installing and maintaining all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Software.

PerkinElmer shall have no obligation to provide Support Services if the Customer fails to pay the required support fees (as defined in Section 3 hereof) when due or otherwise elects to discontinue Support Services.

PerkinElmer shall have no obligation to support (i) an altered, changed, damaged or modified System; (ii) System Errors caused by the Customer's negligence, hardware malfunction or other causes beyond the control of PerkinElmer; (iii) System Errors caused by a third-party software not licensed through PerkinElmer; and (iv) a System installed in an operating environment for which the System has not been licensed.

3. Customer's Responsibilities

The Customer must provide PerkinElmer with a primary contact during the Support Term to assist with resolution of System Errors, including data gathering, testing, and applying fixes, as deemed necessary by PerkinElmer.

The Customer is responsible for establishing and executing regular backups on the Customer's file server, and of other components of the Systems. It is the Customer's sole responsibility to maintain a complete backup of the System that can, in the event of severe server failure, be restored to bring the environment back to operational status. In the event of this backup not being complete, PerkinElmer may charge for additional services rendered based on PerkinElmer's then-current standard time and material charges.

The Customer, at its own expense, will establish and maintain an environment consistent with the specifications furnished by PerkinElmer for the System. The Customer is responsible for all maintenance and upgrades to the Customer's computer network and servers, including but not limited to, maintaining adequate virus checking procedures, installing or re-installing servers or workstations, deploying hardware or software upgrades to these computers, and adding or changing peripheral devices such as printers. The Customer acknowledges that it is its



responsibility to monitor available disk space to ensure sufficient resources are made available to the System on a constant basis.

The Customer is responsible for ensuring that its personnel have sufficient training to attain and maintain competence in the operation of the System.

The Customer shall, upon System Error resolution, validate to PerkinElmer, in writing, that the System Error has been satisfactorily closed and normal operation of the System has resumed.

4. PerkinElmer Access to the System

The Customer agrees to provide PerkinElmer a high speed (128 Kbps or better), on-line remote access to the System server and workstations across the Internet, Extranet or dial up connection. Security considerations shall be the responsibility of the Customer. The Customer acknowledges that this connection is a prerequisite for PerkinElmer being able to provide the Support Services described in this Agreement. Computers that do not have said connection enabled are not covered by this Agreement.

Should PerkinElmer assistance be requested for such computer, such assistance shall be made available, subject to PerkinElmer staff availability and on a time and material basis using PerkinElmer's then-current standard daily rate plus travel expenses. Service calls placed under this Agreement have priority over such other calls.

5. Support Severity Levels and Response Time

PerkinElmer recognizes four (4) severity levels of System Errors or issues. "Error" means a failure of the System to conform to the specifications set forth in the Documentation (as defined herein), resulting in the inability to use, or material restriction in the use of, the System. "Documentation" means any and all information, written or otherwise, provided to the Customer describing the System, its operation and matters related to its use, such as current user manuals, operating instructions, and installation guides. In addition to such published written material, Documentation shall include such information communicated by electronic networks in text, data, voice and/or machine code.

Level One – Fatal

In order for a System Error to be considered Level One, one of the following conditions must be met:

- System does not allow the Customer to view or enter demographic, result or case data necessary to determine if a sample indicates an infant is at risk for a disorder.
- System produces normal results that are expected to be abnormal or at risk, or produces results that are not equivalent to those expected to be produced as defined in the agreed upon specifications and these results cannot be modified prior to being reported.
- System cannot perform a function that is required for results to be reported for a child (e.g., System does not allow the Customer to get results to "released" status).
- System does not allow an action to be performed in patient follow up.
- System's positive ID tracking is not accurate or functional.

In PerkinElmer's System Error tracking database this severity is designated "1-Fatal Error".

PerkinElmer agrees to acknowledge the receipt of Level One service requests:

- By 5 PM ET the same business day* for service calls received by 12 Noon ET.



- By 12 Noon ET of the following business day* for service calls received after 12 Noon ET.

PerkinElmer agrees to use its reasonable efforts to implement a resolution to Level One service requests within one (1) business day* from acknowledgement of the service request. PerkinElmer will work on the service request until resolved or as long as useful progress can be made. In the event a resolution cannot be provided, PerkinElmer shall work with the Customer to develop a reasonable work around, subject to approval by the Customer.

Level Two – Critical

In order for a System Error to be considered Level Two, in addition to the issue not meeting a condition for Level One severity, one of the following conditions must be met:

- System presents an error that prevents the completion of an important task. The task cannot be completed by a reasonable workaround or by repeating the task.
- System creates delays or failures in reporting. Results can be reported but not within the standard lab turn-around time for a single specimen. This turn-around time is defined to be three (3) days from the date the specimen is received.

In PerkinElmer's System Error tracking database this severity is designated "2-Critical Error".

PerkinElmer agrees to acknowledge the receipt of Level Two service requests:

- By 5 PM ET the same business day* for service calls received by 12 Noon ET.
- By 12 Noon ET of the following business day* for service calls received after 12 Noon ET.

PerkinElmer agrees to use its reasonable efforts to implement a resolution to Level Two service requests within three (3) business days* from acknowledgement of the service request.

Level Three – Moderate

In order for a System Error to be considered Level Three, in addition to the issue not meeting a condition for Level One or Level Two severities, one of the following conditions must be met:

- System presents an error. However, results can be reported within the standard lab turn-around time for a single specimen and actions can be performed within the follow up system by using a reasonable workaround.
- System performance is delayed. However, results can be reported within the standard lab turn-around time for a single specimen and actions can still be performed within the follow up system by using a reasonable workaround.

In PerkinElmer's System Error tracking database this severity is designated "3-Moderate Error".

PerkinElmer agrees to acknowledge the receipt of Level Three service requests:

- Within five (5) business days* after the service request is submitted.

PerkinElmer agrees to use its reasonable efforts to implement a resolution to Level Three service requests:

- For custom modules, within sixty (60) days from acknowledgement of the service request.
- For non-custom modules, during PerkinElmer's next scheduled System update.

Level Four – Minor



In order for a System Error to be considered Level Four, in addition to the issue not meeting the conditions for Level One, Level Two or Level Three severities, one of the following conditions must be met:

- An error in visual presentation, including misspelling or incorrect order or display of columns.
- System does not allow an individual access to a specific module.

In PerkinElmer's System Error tracking database this severity is designated "4-Minor Error".

PerkinElmer agrees to acknowledge the receipt of Level Four service requests:

- Within ten (10) business days* after the service request is submitted.

PerkinElmer agrees to use its reasonable efforts to implement a resolution to Level Four service requests:

- For custom modules, within sixty (60) days from the acknowledgement of the service request.
- For non-custom modules, during PerkinElmer's next scheduled System update.

* *Business day is based on PerkinElmer's corporate office and hours of operation.*

6. Service Request

The Customer shall communicate a System Error by e-mail or, when available, on-line reporting to PerkinElmer's System Error tracking database (www.defecttracker.com). All phone calls, which shall be limited to issues requiring immediate resolution, shall be placed to a phone number designated by PerkinElmer.

The Customer must name a person responsible for operating the System, who will also work as a primary contact in matters relating to the Support Services.

The following information must be attached to each service request:

- Contact details of the person placing the service request
- Software and version related to the service request
- Description of the System Error, including at minimum: the function causing the System Error, error messages given by the System, data inputted to the System causing the System Error and output of the System. Screen shots and printouts will be attached when applicable.

The Customer's primary representative must be reachable, in person, by telephone and by e-mail, during evaluation and resolution of the System Error.

7. Termination

Either party may terminate this Agreement effective immediately by providing written notice to the other party, if the other party commits any serious or persistent breach of any of its obligations under this Agreement and (in case of a breach capable of being remedied) does not remedy the breach within thirty (30) days after receipt of written notice thereof.

Either party may terminate this Agreement for any reason by providing ninety (90) days advance written notice to the other party of its intention to terminate and PerkinElmer hereby agrees to refund to the State any unearned support fees paid as of the effective date of termination for performance of services following the effective date of termination.



On termination of this Agreement, all rights and obligations of the parties under this Agreement shall automatically terminate except any obligation which expressly or by implication is intended to come into or continue in force on or after termination.