

RFP Notice: Providing Diagnostics Services through GeneXpert by Private Laboratories for Tuberculosis Diagnosis

1. Procurement Notice

Karnataka Health Promotion Trust (KHPT), Bangalore invites the selected agencies to submit proposals **to provide diagnostics services through GeneXpert by Private Laboratories for Tuberculosis Diagnosis**

RFP Number	KHPT/JEET/2020-21/001
Release of Request for Proposals	11-May-2020
Response to Queries/Clarifications	18-May-2020
Proposals due/last date & time of submission of proposal	25-May-2020
Financial Bid Opening of Technically Qualified Bidders	26-May-2020
Communication to selected Bidder / Agency	29-May-2020

The proposal must be submitted electronically at the email ID khptblr@khpt.org latest by **25-May-2020** by 23:59 Hrs.

For any queries on the RFP, kindly address your mail to: khptblr@khpt.org

Proposals received after the due date and to any other email ID other than khptblr@khpt.org will not be considered.

2. Introduction to the RFP

- a. KHPT is a not for profit entity that spearheads focused initiatives to improve the health and the wellbeing of communities in India. In 2003, KHPT was founded with a single mission to reduce the prevalence of HIV in Karnataka's high priority pockets. The initiative's success made it a scalable model at national and global levels and KHPT became a learning site for innovative approaches. The unique DNA of KHPTs programs is a combination of evidence generation, grassroots community connect and government relationship. With these strengths, we learned and reflected on our decade long experience leading us to look beyond HIV to four other thematic areas. KHPT currently works on TB, HIV-AIDS, MNCH, adolescent health and comprehensive primary health care. Our bold social ambition to achieve population-level health impact through a systems change approach.
- b. This Request for Proposals (RFP) and the Guidelines for Preparing Proposals that follow is designed to help agencies to produce proposals that are acceptable to the KHPT, and to ensure that all proposals are given equal consideration. It is essential, therefore, that Respondents provide the complete information that is requested, and in the formats and on the terms specified.

3. General instructions and considerations

- a. These instructions should be read in conjunction with information contained in the enclosed Scope of work (SOW) Annexure A, and in any accompanying documents within this package.
- b. This Request for Proposals (RFP) to provide KHPT with relevant information to undertake "**Providing Diagnostics Services through GeneXpert by Private Laboratories for Tuberculosis Diagnosis**"
- c. KHPT is not bound to accept the lowest priced, or any proposal. KHPT reserves the right to request any (or all) Respondent(s) to meet with KHPT to clarify their proposal(s) without commitment, and to publish on its website answers to any questions raised by any Respondent (without identifying that Respondent).
- d. Respondents are responsible for all costs associated with proposal preparation and submission of its bid and KHPT will in no case be responsible or liable for those cost, regardless of conduct or outcome of the process.

- e. Respondents are neither allowed to join hands to participate in the tender nor allowed to submit multiple bids. In case of detection of such activity their bid(s) is/are liable to be rejected. Proposal through consortium is not allowed.

4. Bidding Process

Bidders are advised to study the Bid Document carefully. Submission of the Bid shall be deemed to have been done after careful study and examination of all instructions, eligibility norms, terms and requirement specifications in the bidding document with full understanding of its implications. Bids not complying with all the given clauses in this bidding document or failure to furnish all information required by the bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will be at bidder's risk and may result in the rejection of Bid.

5. Queries/Clarifications

In case of any clarifications or queries, bidders can submit the same to KHPT via email. Queries received, from the bidders, two days prior to the pre- bid meeting shall be addressed. The queries can be sent to KHPT through email at khptblr@khpt.org in .xls or .xlsx format carrying details like S. No., referred clause, query/suggestion. Queries not sent in the required format shall not be entertained.

6. Language of the Bid

The Bid prepared by the Bidder, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and KHPT, shall be written in English. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an accurate translation of the relevant pages in English. For the purposes of interpretation of the bid, the translation shall govern. Information supplied in another language without proper translation shall be rejected.

7. Bid Submission

- a. Tender bid must contain the name, office and after office hours addresses including telephone number(s) of the person(s) who are authorized to submit the bid with their signatures.
- b. Un-signed & un-stamped bid shall not be accepted
- c. All pages of the bid being submitted must be signed and sequentially numbered by the bidder irrespective of the nature of content of the documents
- d. Bids NOT submitted as per the specified format and nomenclature will be out rightly rejected.
- e. Ambiguous bids will be out rightly rejected. KHPT will NOT be responsible for any delay on the part of the vendor in obtaining the terms and conditions of the tender notice or submission of the tender bids.
- f. Bidders shall indicate their rates in clear/visible figures as well as in words. In case of a mismatch, the rates written in words will prevail.
- g. Financial bid may be submitted as per Annexure D given in the tender document
- h. The interested bidders may submit their Bid to KHPT on or before the time mentioned in this document.
- i. The Financial bid (along with the covering letter and associated documents) have to be emailed as given in the Appendix. No physical document is to be submitted by the agencies.
- j. As the bids can be emailed only up to the defined date and time, there can't be any late bids. KHPT will not be responsible for any delay in obtaining the terms and conditions of the tender or emailing of the bid before the due date and time of submission.
- k. Any bid received by KHPT after the prescribed deadline for submission of bids will be summarily rejected. KHPT shall not be responsible for any delay or non-receipt / non-delivery of the documents. No further correspondence on this subject will be entertained.
- l. Bids, complete in all respects, must be emailed on the mentioned email-id by the due date and time.

- m. At any time prior to the last date for receipt of bids, KHPT, may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective agency, modify the Tender Document by an amendment.
- n. Bids not quoted as per the format given by KHPT will be rejected straightway.
- o. No deviation from the tender specifications & terms and conditions will be accepted
- p. Printed terms and conditions of the bidders will not be considered as forming part of their bid. In case terms and conditions of the contract applicable to the Invitation of bid are not acceptable to any bidder, they should clearly specify the deviations in their bids.

8. Receipt, Evaluation and handling of proposals

- 8.1. Once a proposal is received before the due date and time, the KHPT will:
 - i. log the receipt of the proposals and record the business information
 - ii. review all proposals and disqualify any non-responsive ones (that fail to meet the terms set out in these instructions), and retain the business details on file with a note indicating disqualification
 - iii. evaluate all qualified proposals objectively in line with the criteria specified below
 - iv. Inform respondents within 15 business days of the evaluation decision being made.
- 8.2. **The KHPT reserves the right:** All RFP responses become the property of KHPT and KHPT reserve the rights in its sole discretion to:
 - i. To accept or reject any and all proposals and/or to annul the RFP process prior to award, without thereby incurring any liability to the affected Respondents or any obligation to inform the affected respondents of the grounds for KHPT's actions prior to contract award, and
 - ii. To negotiate - with Respondent(s) invited to negotiate - the proposed technical approach and methodology and the proposed price based on the Respondent's proposals.
 - iii. Amend this RFP at any time
 - iv. KHPT reserves the right to issue an award based on the initial evaluation of offers without discussion.
- 8.3. **RFP not an offer:** This RFP represents only a definition of requirements. It is merely an invitation for submission of proposals and does not legally obligate KHPT to accept any of the submitted proposals in whole or in part, nor is KHPT obligated to select the lowest priced proposal. KHPT has no contractual obligations with any firm based upon issuance of this RFP. It is not an offer to contract. Only the execution of a written contract shall obligate KHPT in accordance with the terms and conditions contained in such contract.
- 8.4. **Security – Non-Disclosure Agreement:** The selected partner as part of the proposal should sign the non-disclosure agreement to safeguard the confidentiality of KHPT's business information and data.

9. Bid Validity

All the bids must be valid for a period of 180 days from the last date of bid submission. However, the rates/price quoted should be valid for the entire duration of the contract. No request will be considered for price revision during the empanelment (contract) period. If necessary, KHPT will seek extension in the bid validity period beyond 180 days. The bidders, not agreeing for such extensions will be allowed to withdraw their bids.

10. Submission of Proposal

- a. The financial proposal (along with the covering letter and associated documents) must be received in English by KHPT no later than 25-May-2020 at 23:59:00 Indian Standard Time.

- b. The soft copies of Financial Proposal (along with the covering letter and associated documents) should be put into covering email specifically indicating the subject line Proposal on – **“Providing Diagnostics Services through GeneXpert by Private Laboratories for Tuberculosis Diagnosis”**. The proposal must be submitted electronically at the email id khptblr@khpt.org in word format for the covering letter and associated documents and an **excel** format for the financial bid. Please submit a dynamic detailed excel file with in-built formulae, if any, **latest by 25-May-2020 23:59:00 IST**.
- c. For any queries, kindly address your mail to khptblr@khpt.org
- d. Late/incomplete proposals will not be accepted under any circumstance. Proposals received after the due date and time will not be considered.

12. Eligibility, Selection and Payments Criteria

The eligibility criteria, selection criteria and payments for the bidders is mentioned in annexure E of the document

14. Conflict of Interest

- XIV. Respondents must disclose in their proposal details of any circumstances, including personal, financial and business activities that will, or might, give rise to a conflict of interest. This disclosure must extend to all personnel proposed to undertake the work.
- XV. Where Respondents identify any potential conflicts, they must state how they intend to avoid any impact arising from such conflicts. The KHPT reserves the right to reject any proposals which, in the KHPT’s opinion, give rise, or could potentially give rise to, a conflict of interest.
- XVI. With respect to this condition, please be advised that the organizations that may fall within the scope of this evaluation will include those below, with which any association must be disclosed:
 - i. Karnataka Health Promotion Trust(KHPT)
 - ii. Foundation for Innovative New Diagnostics – FIND India
 - iii. The Global Fund to fight AIDS, Tuberculosis, and Malaria
 - iv. Central TB Division, Ministry of Health and Family Welfare, Government of India

15. General Disclosures

- I. Respondents must disclose:
 - i. If they are or have been the subject of any proceedings or other arrangements relating to bankruptcy, insolvency or the financial standing of the Respondent including but not limited to the appointment of any officer such as a receiver in relation to the Respondent personal or business matters or an arrangement with creditors or of any other similar proceedings.
 - ii. If they have been convicted of, or are the subject of any proceedings, relating to:
 - a) Criminal offence or other offence, a serious offence involving the activities of a criminal organization or found by any regulator or professional body to have committed professional misconduct.
 - b) Corruption including the offer or receipt of any inducement of any kind in relation to obtaining any contract, with the KHPT, or any other contracting body or authority
 - c) Failure to fulfil any obligations in any jurisdiction relating to the payment of taxes

ii. Contract Monitoring and Penalties

Details related to the contract monitoring process and penalties (if applicable) is mentioned in Annexure E of the document.

iii. Contract Duration

The selected agency would be on-boarded for the contract time period of **1-Jun-2020 to 31-Mar-2021**. However, the contract duration can be extended, as required, based on the satisfactory performance of the agency resources during the implementation of the scope of work and through mutual consent between the selected bidder / agency & KHPT.

iv. Award of Contract

On written communication from KHPT for having qualified for empanelment, the agency will sign the contract (letter of empanelment) within 7 days of such communication, failing which the offer will be treated as withdrawn. KHPT reserves the right to extend the offer to the next eligible bidder.

V. Guidelines for Preparing Proposals

- a. Language: Proposals must be submitted in English.
- b. Structure: Proposals must be set out in two mail parts:

Part 1: Covering letter and Declaration (Annexure C and C(i))

Part 2: Financial proposal (Annexure D)

- vi. The entire contract would be governed by the terms and conditions of the contract as mentioned in Annexure A, B, E and F.

Annexure A
Scope of Work (SOW)

Outsourcing of GeneXpert testing to private sector laboratories:

Upfront DST is one of the key aspects of the National Strategic Plan on which Joint Effort for Elimination of Tuberculosis (JEET) operates in close partnership with the Central TB Division, Government of India and supported by The Global Fund to fight AIDS, Tuberculosis and Malaria.

The JEET project is facilitating upfront GeneXpert testing for TB for patients in the private sector. For this purpose GeneXpert tests are being outsourced to private sector labs in identified cities

Table below details the estimate on the number of tests that could potentially be outsourced:

Cities	Bangalore (including Bangalore Urban, Bangalore City & Bangalore Rural NTEP districts)
Estimated No. of Tests that could potentially be outsourced (monthly)	250

Role of the Service Provider/Agency

- The service provider/agency would ensure to uphold the overarching objective of providing TB patients with affordable TB diagnostics
- The service provider/agency would recruit adequate personnel to manage GeneXpert testing in the accredited labs present in the JEET cities mentioned above
- The service provider/agency would ensure that their available staff/personnel have undergone necessary training for performing the tests
- The service provider/agency would provide services free of cost to patients and ensure their privacy and confidentiality.
- Once the sample is received with the lab facility of the service provider/agency, it would provide results within 48 hours to the project staff positioned in these cities by the Tender Inviting Authority and the patients directly, as applicable. These program staff would liaison with the service provider/agency to deliver the sample and collect reports. There might be cases of patients directly delivering the samples and collecting reports. The turnaround time for the service provider/agency remains the same.
- The service provider/agency will not offer or conduct TB diagnostic tests banned by the Government of India (for example, sero-diagnostic tests for TB). Further, the service provider/agency agree to discourage use of samples and tests known to be inappropriate for diagnosis of active TB. The service provider/agency agrees that none of the tests offered under the contract will be used on blood (they can be run on sputum samples and on site specific EPTB samples e.g. biopsy tissues, pleural fluid, CSF, etc.)
- Service provider/agency will agree to calibrate their testing equipment as per manufacturer and WHO recommended stipulations in a timely manner. For example, GeneXpert machines are to be completed annually or before a cycle of 2000 tests (for 4 module machine), whichever is earlier.
- Diagnostic products supplied by the designated manufacturers and suppliers and used by the service provider/agency will either be the products recommended by the WHO or those products included in the RNTCP/NTEP guidelines or are products included in Indian Standards of TB Care, or are supported by an evidence base demonstrating clinical effectiveness and applicability to tuberculosis diagnosis.
- The documentation of the tests done will be maintained as per the requirements of the NTEP guidelines.

Annexure – B

TERMS AND CONDITIONS OF THE CONTRACT (FOR REFERENCE ONLY – MAY CHANGE AS PER RELEVANT POLICY)

The selected agency will be expected to enter into a Contract with the KHPT for the duration of the work. Below are the standard clauses, if the clauses are agreeable, please submit your proposals.

1. **Term/Termination**

- a. The Term of this Agreement shall commence on **1-Jun-2020 to 31-Mar-2021**
- b. Either Party may terminate this Agreement upon the other Party's failure to perform its obligations hereunder if such failure to perform is not cured within fifteen (15) days following their receipt of written notice from the complaining Party. The written notice must be sent in a timely manner upon the complaining Party's discovery of the other Party's failure to perform.
- c. The Parties may mutually terminate this Agreement at any time upon the written agreement of the Parties.
- d. KHPT may terminate this Agreement upon not less than fifteen (15) days' prior written notice to Partner should KHPT discontinue its work or make other significant programming changes requiring the termination of this Agreement.

2. **Budget**

- a. The project will be implemented according to the Scope of Work.
- b. Any changes to Budget due to an increase/decrease in costs will be discussed by the Parties, confirmed in writing, and attached as an amendment to this Agreement.

3. **Allocation of funds**

- a. KHPT shall initiate funds disbursement upon the timely receipt of invoices and reports
- b. Upon reasonable request from KHPT, KHPT's auditors or KHPT's donors, Partner shall provide to KHPT any financial records, including accounting records, bank statements, and expense receipts, which document uses of KHPT funds, and all information required in connection with any examination, evaluation, or assessment relating to the Agreement.

4. **Relationship of the Parties.**

The Parties are independent entities and the employees of one Party shall not be deemed employees, agents, partners, joint ventures or representatives of the other. Neither Party has the power or authority to act for, represent or bind the other. KHPT shall not be responsible for any act or omission of Partner, its employees, contractors or agents. Partner personnel described in this Agreement are not employees of KHPT and are neither eligible for KHPT employee benefits nor covered under KHPT's insurance policies. Partner is solely responsible for its employees' supervision, daily direction and control, and payment of salary (including, without limitation, withholding of income taxes and social security), workers' compensation and disability benefit.

5. **Other Efforts.**

The Parties to this Agreement may from time to time choose to engage in additional efforts to enhance or support the work contemplated by this Agreement. Such additional efforts shall be separately agreed upon, in writing, by the Parties and will be made a part of this Agreement by being attached as an addendum and/or amendment to this Agreement.

6. **Press/Marketing.**

- a. Any public announcement, including press releases and media advisories, regarding this Agreement or the work of the Parties shall require the prior written approval from KHPT.
- b. The Parties acknowledge their mutual desire to make all meaningful results of the Project publicly available. As applicable, Partner / selected agency must submit a copy of any proposed publication

related to the Project for KHPT's review and comment at least thirty (30) days in advance of submission. Partner shall not publish or disseminate results or reports arising from the Project without KHPT's prior written consent. All publications shall state that the views expressed therein are entirely those of the authors and do not necessarily represent those of KHPT or KHPT's donors.

7. **Confidentiality**

- a. "Confidential Information" means any and all non-public information of a Party, including, but not limited to, (i) third party information that either Party is obligated to maintain as confidential, (ii) information developed by either Party on behalf of the other Party, (iii) information developed by either Party within the performance of its duties under this Agreement, (iv) information pertaining to a disclosing Party's technologies, products, intellectual property, finances, or operations, and (v) information that either Party discloses to the other Party, directly or indirectly, in writing or orally, which is designated as "Confidential," "Proprietary," or "Restricted." Notwithstanding the foregoing, Confidential Information shall specifically, but without limitation, include business plans, data, lists, names, design documents, drawings, financial analyses, forecasts, formulas, know-how, ideas, inventions, market information, marketing plans, processes, products, product plans, research, specifications, software, source code, and trade secrets. Confidential Information shall not, however, include any information that, as evidenced by written records, (i) was publicly known or generally available in the public domain prior to the disclosing Party's disclosure to the receiving Party, (ii) becomes publicly known and generally available after disclosure to the receiving Party through no wrongful acts or omissions of the receiving Party, (iii) the receiving Party possessed prior to disclosure, as shown by the receiving Party's written evidence, or (iv) the receiving Party obtained from a third party lawfully in possession of such information and without a breach of that third party's obligations of confidentiality.
- b. The receiving Party shall use all Confidential Information solely for purposes of performing its obligations under this Agreement. During the Term of this Agreement and thereafter, the receiving Party shall not directly or indirectly (i) publish, disseminate or otherwise disclose, (ii) use for its own benefit or the benefit of a third party, or (iii) deliver or make available any Confidential Information of the disclosing Party to a third party, other than to further the purposes of this Agreement and with the prior written consent of the disclosing Party. The receiving Party shall limit access to Confidential Information to its officers, employees, agents, subcontractors, attorneys, auditors, or lenders (collectively, "Representatives") who have a need to know for purposes of performance of this Agreement, and require such Representatives to keep the Confidential Information confidential and to be bound by this Agreement to the same extent as if they were parties to this Agreement; provided that, the receiving Party will remain liable for the breach of such terms and conditions by its Representatives and will be liable for any damages incurred by the disclosing Party pursuant to this Agreement as a result of such breach. The receiving Party shall exercise all reasonable precautions to protect the integrity and confidentiality of the Confidential Information. Such precautions shall include, but not be limited to, the highest degree of care the receiving Party utilizes to protect its own Confidential Information of a similar nature. Upon expiration or termination of this Agreement, or at the request of the disclosing Party, whichever occurs first, the receiving Party must immediately return to the disclosing Party or destroy all Confidential Information provided to or developed by the receiving Party under this Agreement. Notwithstanding the foregoing, if it is infeasible for the receiving Party to return or destroy the disclosing Party's Confidential Information hereunder (e.g., for legal, risk management, and/or archival purposes), the receiving Party shall: (i) extend the protections of this Agreement to such Confidential Information; and (ii) limit further uses and disclosures of Confidential Information to those purposes that make the return or destruction infeasible for so long as the receiving Party maintains the Confidential Information.
- c. If the law requires the receiving Party to make any disclosure that this Agreement prohibits or otherwise constrains, the receiving Party must promptly notify the disclosing Party in writing so as to allow the disclosing Party a reasonable opportunity to seek a protective order or other appropriate relief. The receiving Party shall provide reasonably requested assistance to the disclosing Party for the purpose of obtaining such order or other relief. Subject to the foregoing

sentences, the receiving Party may only furnish the portion of Confidential Information that the receiving Party is legally required to disclose.

- d. As between the Parties, Confidential Information is the exclusive property of the disclosing Party, subject to the receiving Party's rights to use the Confidential Information which is disclosed to the receiving Party from the disclosing Party to perform this Agreement. The use of Confidential Information in furtherance of this Agreement shall not be deemed a waiver by the disclosing Party of any rights with respect to such materials, and it is expressly agreed that neither Party transfer by operation of this Agreement to the other Party hereto any patent right, copyright, or other intellectual property or proprietary right that either Party owns or controls.

8. **Marks**

This MOA shall not be construed to grant to Partner any license to use the other Party's (or any of its affiliates') names or logos whether now existing or adapted in the future, in any format (the "Marks"). Any request by a party for use of the other party's Marks shall be submitted in writing to the other Party. Each Party shall have the right, in its sole discretion, to grant the other Party any usage rights in its Marks. Any such usage rights shall be agreed to by the Parties in writing.

9. **Indemnification.**

Each party (an "Indemnifying Party") agrees to defend, indemnify and hold harmless the other Party (the "Indemnified Party"), at the indemnifying Party's cost and expense, from and against any and all losses, costs, damages, fees or expenses ("Losses"). Losses shall include, without limitation, actual damages, attorney and expert witness fees, court costs, and other litigation expenses relating to or in connection with a third party claim arising out of (i) any breach by the Indemnifying Party of this Agreement, or (ii) any act, omission, gross negligence or wilful misconduct on the part of the Indemnifying Party, including any of its employees, contractors or agents, in performing its obligations or exercising its rights under this Agreement. The foregoing shall not apply to the extent that any such Losses are attributable to the gross negligence or wilful misconduct of the Indemnified Party, including any of its employees, contractors or agents. In no event shall either Party be liable for indirect, special, punitive or consequential damages.

10. **Property Rights.**

a. "Developments" includes, whether patentable or unpatentable ideas, concepts, discoveries, inventions, developments, improvements, know-how, trade secrets, designs, processes, methodologies, materials, products, formulations, data, documentation, reports, algorithms, notation systems, computer programs, works of authorship, databases, mask works, devices, equipment and any other creations (whether or not patentable or subject to copyright or trade secret protection) in all media that are developed or conceived or reduced to practice by Partner, either alone or jointly with others, and that result from the performance of the Services under this Agreement.

b. All Developments will be the exclusive property of KHPT. All Developments that are copyrightable works shall be deemed to be "works made for hire" to the extent permissible under applicable law. To the extent any such copyrightable works may not be considered works made for hire, and generally in relation to all other Developments, Partner hereby perpetually and irrevocably assigns, transfers and conveys and solely to the extent any such assignment cannot be made at present, hereby agrees to assign, transfer and convey to KHPT, without further compensation, all right, title, and interest in and to any and all Developments, including any related patents, patent applications, copyrights, copyright applications, trademarks, trade names, trade secrets, and other proprietary rights, and all claims and causes of actions of any kind with respect to any of the foregoing, whether now known or thereafter arising. Partner agrees to perform all reasonable actions, including as necessary, executing documents and assisting with any necessary filings, as may be

required to vest ownership (or record ownership) of the Deliverables in KHPT, as required by this Section 12.

11. **Data Quality Standards.**

Partner commits to working together with KHPT during the course of the contract to ensure high quality deliverable deriving out of the scope of work (See Annex A, SOW).

12. **Data Privacy.**

- a. As further described in Annex A, Scope of Work, any data collected by the Partner during the course of this Agreement would be handed over to KHPT for storage.
- b. Data collected or entered by Partner in the performance of this Agreement shall be limited to that which is strictly necessary to complete the Deliverables. Partner shall use any and all data gathered during this Agreement only as necessary to complete the Deliverables in accordance with this Agreement and not for any other purpose whatsoever.
- c. Partner shall take reasonable steps to protect data in Partner's possession from unauthorized use, access, disclosure, alteration or destruction. Security measures shall include access controls, encryption, and/or other means, where appropriate. Partner must immediately notify KHPT of any known security breach that may result in the unauthorized use, access, disclosure, alteration or destruction of the data.
- d. Partner shall, in collecting and entering data, comply with all applicable industry standard security policies for the protection of sensitive personal information. Partner shall immediately report to KHPT any actual, attempted, or suspected breaches of the security or privacy of the data, and the Parties shall mutually agree on appropriate steps to (i) immediately alleviate any continued threat to the privacy or security of such data subjects; and (ii) prevent foreseeable future threats to the security or privacy of the data subjects. Partner's failure to resolve, to KHPT's reasonable satisfaction, any security failure shall be a material breach of this Agreement.
- e. Partner will (a) ensure that the collection, use and disclosure of data complies with all applicable laws and regulations, including (without limitation) the EU General Data Protection Regulation 2016/679 ("**GDPR**") and those with respect to human subjects participation in health research and other applicable privacy protections, and (b) de-identify the data by removing all personal identifiable information prior to providing the data to KHPT, or any other party in connection with this Agreement.

13. **Legal Compliance.**

- a. Partner agrees to conduct all work under this Agreement in accordance with all applicable laws, regulations, and rules and will not infringe, misappropriate, or violate the intellectual property, privacy, or publicity rights of KHPT or any third party.
- b. Partner certifies that it, its agents and contractors (i) do not, and will at no point during the Term of this Agreement, appear on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control ("OFAC"), and (ii) have not been, and will at no point during the Term of this Agreement be designated by the United Nations Security Council (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee"). To determine whether there has been a published designation of an individual or entity by the 1267 Committee, Partner should refer to the consolidated list available online at the Committee's website: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>.
- c. Partner shall take no part in acts of bribery, fraud, or other corrupt practices. Partner shall furthermore take reasonable steps to minimize the opportunities for loss, bribery, fraud, conflicts of interest, or other corrupt practices to arise or occur. For the purposes of this Section 13: "**Loss**"

is understood as the irreversible consequences of unintentional and uncontrollable events on the financial resources provided by KHPT, or the medicines and other products funded by KHPT; "**Bribery**" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to improperly influence the actions of another party. "**Fraud**" is any act or omission that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation, including misrepresentation or any intellectual fraud, such as the falsification of the data (including clinical or other trial results), diversion or financial misappropriation. Fraud also includes coercive or collusive practices. "**Conflicts of Interest**" include any situation where the impartial and objective implementation of the Project is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest. Partner shall fully cooperate with any independent investigation commissioned by KHPT or KHPT's Donors into any of the preceding acts or circumstances that occur during the Term of this Agreement.

- d. Partner is aware of KHPT's commitment to anti-corruption and shall not engage in Corrupt Practices, directly or indirectly, in relation to the Project. Corrupt Practices include, but are not limited to, Collusive Practices, Coercive Practices, and Obstructive Conduct. "**Collusive Practice**" includes the proposing or entering into an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party. "**Coercive Practice**" includes impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party. "**Obstructive Conduct**" includes (i) any act which deliberately and in an effort to compromise an investigation, destroys, falsifies, alters or conceals information or documents that may be relevant to a fraud and corruption investigation, or material that could become evidence as a result of such investigation; or (ii) the making of false statements to investigators during such an investigation. Partner shall fully cooperate with any independent investigation commissioned by KHPT or KHPT's Donors into any of the preceding acts or circumstances that occur during the Term of this Agreement. Partner is expected to adhere to the United States Federal Corrupt Practices Act (FCPA), which applies to all international activities by representatives of a U.S. company including KHPT, as well as any other local anti-bribery laws and regulations.

14. **LIMITATIONS ON LIABILITY.**

EXCEPT FOR EACH PARTY'S CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY GOODWILL, LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM THIS AGREEMENT, REGARDLESS OF WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT THE PARTY WAS OR SHOULD HAVE BEEN AWARE OF, OR WAS ADVISED OF, THE POSSIBILITY OF SUCH DAMAGES. NO LIMITATIONS ON LIABILITY SHALL BE ENFORCEABLE WHERE DAMAGES RESULT FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD.

15. **Severability.**

If, for any reason, any part of this Agreement is held to be void or otherwise unenforceable, all other parts of this Agreement shall remain valid and enforceable as if all unenforceable parts were absent from this Agreement on the Effective Date.

16. **Partner Certifications, Representations, and Warranties.**

- a. Partner represents and warrants that, to the best of its knowledge, all information provided to KHPT is accurate and all items purchased under this Agreement or otherwise transferred to KHPT are in good working order and function at a level reasonable for the activities for which KHPT is procuring them.
- b. Nothing in this Agreement shall be construed to waive a Party's implied warranties of merchantability and fitness for a particular purpose.
- c. Partner warrants that no funds it receives under this Agreement shall be used for lobbying activities, including, without limitation, activities which influence or attempt to influence any

legislative or regulatory body, government official or their employees or agents, election, or political activity.

- d. Partner represents and warrants the following to KHPT, and if at any time fails to meet the following representations and warranties, or such representations and warranties are no longer true, accurate or complete, shall immediately notify KHPT: (i) Partner has the right, power and authority to enter into and perform under this Agreement; and (ii) Partner shall comply with and ensure that all personnel, including subcontractors, providing services under this Agreement comply with all applicable laws and all reasonable directions and orders given by Partner, and Partner shall ensure that such personnel are appropriately qualified and, as applicable, licensed and certified, to perform all functions assigned to them in connection with the provision of the services under this Agreement.

17. **Child Protection.**

The Parties agree that all children, in all circumstances, have the right to feel and to be safe and to live free from harm, exploitation and abuse. Whenever directly interacting with children the Parties shall:

- a. Strive to protect children from harm.
- b. Use language and behaviour that is age-sensitive, culturally appropriate and respectful.
- c. Never use language that is condescending, harassing, abusive or sexually provocative.
- d. Obtain consent from a parent or guardian of a child (as defined by applicable local law) before conducting an interview or taking photographs or recorded images.
- e. Never possess, access, or distribute child pornography or take degrading, sexually suggestive or otherwise inappropriate photographs.
- f. Never engage children in any form of sexual activity or acts, including paying for sexual services or acts.

The Parties commit to supporting child protection efforts and promoting awareness and understanding about child risk, harm, and harm to organization. The Parties shall protect children from exploitation and abuse of all kinds in the performance of the Project. In carrying out the Project, Partner shall report to KHPT any behaviour Partner believes may be child abuse or exploitation, suspicion of possession of child exploitation materials, and/or any child abuse or exploitation allegation made by a child or community member.

18. **Prevention of Sexual Exploitation, Abuse and Harassment.** The Parties agree to support core principles regarding the prevention of sexual exploitation, abuse and harassment. Further, by signing this Agreement, Partner agrees to follow and abide by KHPT's Policy on the Prevention of Sexual Exploitation, Abuse and Harassment, which may be updated by KHPT from time to time and may be found here: <https://www.khpt.org>

19. **Waiver.**

Any waiver granted by a Party hereto shall be without prejudice to any other rights such Party may have, will be subject to such Party's continuing review and may be revoked, in such Party's sole discretion, at any time and for any reason. No Party shall be deemed to have waived any right, power or option reserved by this Agreement by virtue of: any custom or practice of the Parties at variance with the terms hereof; any failure, refusal or neglect of the Parties to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder.

20. **Dispute Resolution, Governing Law and Venue.**

- a. Any dispute between the Parties arising out of this Agreement or its implementation shall, unless amicably settled, be subject to conciliation. If the dispute is not resolved by conciliation within sixty (60) days of a conciliator being appointed, the dispute shall be settled by arbitration in accordance with the Indian Arbitration and Conciliation (Amendment) Act, 2015. Any arbitration conducted pursuant to this Section shall be conducted in New Delhi, India and shall be conducted in the English language. If either Party brings an action (whether litigation, arbitration, or otherwise) to enforce its rights under this Agreement or to obtain redress of any kind, including without limitation damages or specific performance, for the breach or violation of any of its provisions, the Prevailing

Party (as defined below) shall be entitled to receive all reasonable costs and expenses relating to that legal action and appeals therefrom, including attorney's fees and expert fees.

- b. For the purposes of this Agreement, "Prevailing Party" means the Party for whom a judgment, decree, or final award is rendered such that it shall receive all or substantially all of the relief sought.
- c. If any part of this Agreement conflicts with any part of any proposal provided by either Party prior to the execution of this Agreement, the relevant part of this Agreement shall govern.
- d. This Agreement shall be governed by the substantive laws of India to the exclusion of conflict of law provisions.

21. **Notice.**

All notices and requests in connection with this MOA shall be given to the Parties by certified or registered mail, by a nationally or internationally recognized courier service, by facsimile (subject to acknowledgement of receipt), or by hand as set forth below. All notices and requests shall be deemed given the earlier of seven (7) days after duly deposited in the mails properly addressed with postage prepaid, or when actually received.

22. **Force Majeure.**

Neither Party shall be liable by reason of any failure in the performance of this contract in accordance with its terms if such failure arises out of causes beyond the control and without the fault and negligence of such Party. Such cases may include, but are not limited, to acts of God, acts of insurrection, fires, floods, epidemics, quarantines, strikes, and labor disputes.

23. **Entire Agreement**

This Agreement represents the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes all prior and concurrent agreements and understandings, oral or written, between the Parties with respect to the subject matter of this Agreement unless otherwise specified in writing by the parties.

24. **No Assignment or Sub-contracting**

No Party may transfer or assign any of its rights or obligations under this Agreement without the express written permission of the other Parties hereto, nor may any part of the Project be subcontracted or delegated by Partner, without the prior written consent of KHPT.

25. **Amendments.**

Any material changes to this Agreement will be discussed by the Parties, confirmed in writing, and attached as an addendum to this Agreement.

26. **Counterparts and Facsimiles.**

The Parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered by facsimile transmission or electronic scan, and facsimile or electronic scan copies of executed signature pages shall be binding as originals.

Annexure C – Covering Letter

To,
Karnataka Health Promotion Trust
Bangalore

Sub: Bid for Contracting of services of Companies/ laboratories for DST services

Dear Sir / Ma'am,

1. Having examined the BID document and appendix thereto, we, the undersigned, in conformity with the said document, offer to provide the said services as given in the BID document and the terms of reference to be signed upon the award of contract.
2. We acknowledge having received the following addendum to the proposal document

Corrigendum / Addendum No.	Dated

3. We undertake, if our proposal is accepted, to provide the services enlisted in the contract within time frame specified, starting from the date of receipt of empanelment letter from KHPT.
4. We agree to execute a contract in the form to be communicated by KHPT, incorporating all agreements with such alterations or additions thereto as may be necessary to adapt such agreement to the circumstances of the standard and notice of the award within time prescribed after notification of your intention to accept this proposal.
5. Unless and until a formal agreement is prepared and executed this proposal together with your written acceptance thereof shall constitute a binding contract agreement.
6. We would like to clearly state that we qualify for this work as our Bidder meets all the eligibility criteria indicated by you in the BID document.
7. We verify that all the information mentioned in Annexure C(i) of this covering letter is true and correct.

We understand that if the details given in support of claims made above are found to be untenable or unverifiable or both our proposal may be rejected without any reference to us. We further clearly understand that KHPT is not obliged to inform us of the reasons of rejection of our proposal.

It is certified that the information furnished here in and as per the document submitted is true and correct and nothing has been concealed or tampered with. We have gone through all the conditions of BID and are liable to any punitive action for furnishing false information/documents.

Dated this _____ day of _____ <YYYY>

Signature
(Bidder Seal)

In the capacity of

Duly authorized to sign documents/proposals for and on behalf of:

Annexure C(i)

1. Name of the Agency: _____
2. Address of the Agency: _____
_____ District _____ PIN _____
3. Email Address: _____
4. Phone: _____
5. Incorporated as: _____ in year _____ at _____ (State Registered Firm, Co-operative Society or Partnership Firm)
6. Whether any Legal Arbitration/proceeding is instituted against the Agency or the Agency has lodged any claim in connection with works carried out by them (Yes/No): _____
7. If yes, please give details. _____
8. Whether the agency complies with the requirement of Registration under the Contract Labour (Regulation and Abolition) Act (Yes/No): _____
9. Agency profile (*)
 - a. Name of the top executive: _____
 - b. Designation: _____
 - c. Email Address: _____
 - d. Mobile Number: _____
 - e. Service Tax Number: _____
 - f. PAN: _____
 - g. Office Strength Technical: _____ Nos.
 - h. Administrative: _____ Nos.
10. Bidder's Turn over (In Rs. Crores)

2016-17	
2017-18	
2018-19	
Average Turnover	
11. Please describe (in maximum 500 words) the Conceptual Understanding/ Strategy and Approach of the tender under following two heads:
 - a. Understanding of the broad objectives of the work
 - b. Description of approach and methodology

Documents in support of the above may be furnished with page numbers indicated in the index. Please use separate sheets wherever necessary.

(*) If the Agency has branch offices in India, please give profile of the HQ office (with a list of all the branch offices and a list of all the labs operating in the cities mentioned in the scope of work) as per item (e) above.

Date

Place

Company Seal

Annexure D – Financial Bid

Name of the Agency _____

Rate/Price for undertaking the GeneXpert tests on GeneXpert facility

S.No.	Activity	Price/Rate
Rate/price (in rupees) to conduct GeneXpert testing on GeneXpert facility for one sample and delivering valid result report within 48 hours of receipt of sample		
1	in numbers	
2	in words	

* the rates quoted would be applicable for all cities/sites mentioned in the scope of work (Annexure A)

** the rates should include the transportation of samples/reports required among GeneXpert facilities and collection centres/other lab facilities

- The rates quoted should be as per industry standards. Bids quoting zero or incredibly low rates compared to the industry prevalent rates will be rejected
- The rates finalized will not be changed throughout the period of empanelment/extended empanelment.
- The empanelled agencies will provide service all over India.
- GST and other taxes as applicable will be paid extra and should not be included in the costs mentioned above.

Authorised Signatory
Name

Date
Place

Company Seal

Annexure E – Important Information

Eligibility Criteria

- a. The bidder should be an Entity registered in India as per the registration explained below
any legal or other entity including without limitation a company registered in India under the Indian Companies Laws or incorporated outside India under relevant laws of incorporation under country of its origin, or a society registered under Societies Registration Act, 1860 or any other Indian law for registration of societies, a registered trust under Indian Trusts Act, 1882 or any other Indian law for registration of public trust or a sole proprietorship or partnership registered under the relevant laws of incorporation unless otherwise specified by the State. Bidders like NGOs and Voluntary Organizations should have registration on DARPAN portal (ngodarpan.gov.in). Health facilities / laboratories should be registered under the relevant rules and regulations of the specific State/ District/ Corporation/ Municipality. All for –profit agencies are also required to be in compliance with the legal registration.
 - b. The bidder should be registered under GST, as applicable and carry a valid PAN, as applicable. Copy of PAN, GST registration, as applicable, should be submitted.
 - c. An undertaking (self-certificate) that the bidder hasn't been blacklisted by a central / state Government institution and there has been no litigation with any government department on account of similar services
 - d. The bidder should have an NABL (Any kind) and/or CAP and/or RNTCP/NTEP and/or NABH
 - e. The bidder should have functional GeneXpert testing diagnostic facilities to cater to the requirements of the Cities mentioned in the scope of work
 - f. The bidder should have all other relevant licenses from state bodies/other relevant authorities required to provide services as per the scope of work mentioned in this document
 - g. The bidder should have collection centres/ lab facilities at all locations mentioned in the scope of work to cater to the requirements of the Cities mentioned in the scope of work
 - h. Program staff appointed by the Tender Inviting Authority would arrange for delivery of the sputum to the GeneXpert facility or the Collection Centres/Lab facilities of the bidder. However, the bidder would be responsible for transportation between the Collection Centres and GeneXpert lab facility. There might be cases of patients directly delivering the samples and collecting reports.
 - i. Bidder would arrange for report delivery to the program staff at the GeneXpert facility or the Collection Centres/Lab facilities of the bidder available in the concerned city/location. In case of patients directly delivering the samples, reports need to be delivered to the patients directly.
 - j. The bidder should have qualified technicians, adequate infrastructure and equipment to perform specific tests (with TAT of <48 hrs from receipt of sample at the collection center/ laboratory to the availability of results to our program staff/ patient) as per the scope of work mentioned in this document
- The minimum infrastructure that lab is expected to have for GeneXpert Testing is an air-conditioned room, back-up electricity services and steady supply of cartridges.*
- k. The bidder should be willing to undergo quality assurance process as per NTEP guidelines
 - l. The bidder should have the facilities to ensure bio medical waste management
 - m. The bidder would undergo an annual calibration exercise

Selection Criteria

- a. All proposals received by the stated closing date will be evaluated and ranked by the procurement committee / competent authority, according to the conditions described below.
- b. The proposals would be evaluated on the basis of the rates/prices quoted for delivering the scope of work described in this document. The bidders would be required to submit their financial bid as per the financial bid annexure and the contract would be awarded on the least cost selection basis.
- c. The Evaluation Team may, in its sole discretion, establish a short-list of Respondents based on the financial bids of the Respondents (the "Short-listed Respondents") for the purpose of conducting presentation/interviews. If KHPT short-lists the bidders, it will short-list the bidders with the lowest financial bid.

Payment Terms

- a. All payments shall be made subject to deduction of TDS (Tax deduction at Source) as per the Income Tax Act, 1961 and other applicable taxes if any as per Government of India rules.
- b. The payments will be released in the name of User A/c accompanied Payment will be made monthly on the basis of the number of tests conducted by the agency across all sites.
- c. Payments would be made centrally to the agency as per the account details provided by the agency at the time of contract signing and as per the monthly invoice generated by the agency for the samples tested across all its lab facilities
- d. The lab will need to submit soft copy of all test reports along with an Invoice on a monthly basis by 7th of the subsequent month
- e. The report should include patient details along with test result. Additionally, the lab also needs to submit a summary report as per annexure F.
- f. In case of an error result during testing of a sample, the lab needs to conduct another test at their own cost. KHPT would not reimburse the lab for the repeat test in such scenarios.
- g. KHPT reserves the right to validate the reports against patients. Any discrepancy will result in penalties.
- h. Payments will be released within 21 days of receipt of invoice along with relevant supporting documents **(reports in soft copies, project vouchers in original etc)**, subject to there not being any errors in the lab's submission.

Contract Monitoring and Penalties

The services delivered as part of this bid document would be reviewed on the monthly basis Any renewals/extensions to the contract would be subject to KHPT's satisfaction on the performance of the agency.

The Tender Inviting Authority may conduct verification through its District assigned personal / agency and could include:

- Verification of records from lab registers
- Interview with 5% of TB patients and referring providers who have availed services under this option
- Review (verification and validity of results) as per the latest RNTCP/NTEP quality assurance protocols
- If discordance is found during the verification mechanism, the assigned penalties may be applied and may be adjusted in payments of subsequent month
- Double the amount of test rate/price decided in the contract would be deducted as penalty for incorrect details/TB patients or delay in submitting valid test report (test reports should be submitted within 48 hours from the receipt of the sample)

Other Penalty Clauses

During the period of this Agreement, Partner shall use commercially reasonable efforts to deliver on the Annex A, Scope of Work in a timely and a quality-assured manner.

- Agency agrees to complete the deliverables defined in Annex A to KHPT's satisfaction in order to receive the full scheduled payments.

- KHPT reserves the right to delay or withhold payment of the final disbursement in the event any deliverables under this Agreement are not completed to the satisfaction of KHPT based on data quality standards as indicated in Annex A.

