



STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
 Department of Technology, Management, and Budget
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 7
 to
 Contract Number 200000000942

CONTRACTOR	Bioreference Laboratories Inc
	481 Edward H. Ross Drive
	Elmwood Park, NJ 07407
	Patrick J. Murray
	201-410-3459
	pmurray@bioreference.com
	CV0007021

STATE	Program Manager	Jason Wilkinson	DTMB
		517-643-6992	
		Wilkinsonj5@michigan.gov	
	Contract Administrator	Marissa Gove	DTMB
		(517) 449-8952	
		govem1@michigan.gov	

CONTRACT SUMMARY

COVID-19 LAB TESTING SERVICES			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
May 19, 2020	May 18, 2021	1 - 1 Year	May 18, 2022
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$70,000,000.00	\$0.00	\$70,000,000.00		

DESCRIPTION

Effective 3/8/22, the following contract language hereby replaces requirement 19 in Section 1.1 of Schedule A:

Section 1.1 Contractor Requirements
 19) The Contractor's staff must be tested for COVID-19, each day worked, with results received and reviewed prior to performing contracted services if testing supplies are available. Any staff with a positive result or staff who have previously tested positive, must follow the MDOC's current COVID guidelines. The MDOC Program Manager or designee will provide the MDOC's COVID guideline updates to the Contractor throughout the contract term.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.



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 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **6**
 to
 Contract Number **20000000942**

CONTRACTOR	Bioreference Laboratories Inc	STATE	Program Manager	Jason Wilkinson	DTMB
	481 Edward H. Ross Drive		517-643-6992		
	Elmwood Park, NJ 07407		Wilkinsonj5@michigan.gov		
	Patrick J. Murray		Contract Administrator	Brandon Samuel	DTMB
	201-410-3459		517-249-0439		
	pmurray@bioreference.com		samuelb@michigan.gov		
CV0007021					

CONTRACT SUMMARY

COVID-19 LAB TESTING SERVICES			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
May 19, 2020	May 18, 2021	1 - 1 Year	December 31, 2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS
N/A

DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	4.5 Months	<input type="checkbox"/>	N/A	May 18, 2022
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$70,000,000.00	\$0.00	\$70,000,000.00		

DESCRIPTION

Effective August 30, 2021 please note the following:

The State is exercising the remaining 4.5-option months available under Contract, the revised expiration date is: May18, 2022.

All other terms, conditions, specifications, and pricing remain the same, per Contractor and Agency agreement, and DTMB Central Procurement Services approval.



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CONTRACT CHANGE NOTICE

Change Notice Number **5**
 to
 Contract Number **20000000942**

CONTRACTOR	Bioreference Laboratories Inc
	481 Edward H. Ross Drive
	Elmwood Park, NJ 07407
	Patrick J. Murray
	201-410-3459
	pmurray@bioreference.com
	CV0007021

STATE	Program Manager	Jason Wilkinson	DTMB
		517-643-6992	
		Wilkinsonj5@michigan.gov	
	Contract Administrator	Brandon Samuel	DTMB
		517-249-0439	
		samuelb@michigan.gov	

CONTRACT SUMMARY

COVID-19 LAB TESTING SERVICES			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
May 19, 2020	May 18, 2021	1 - 1 Year	December 31, 2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$35,000,000.00	\$35,000,000.00	\$70,000,000.00		

DESCRIPTION

Effective June 8, 2021, this Contract is increased by \$35,000,000.00 for MDOC use.

Additionally, State Contract Administrator has changed to Brandon Samuel.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on June 8, 2021.



STATE OF MICHIGAN CENTRAL PROCUREMENT SERVICES

Department of Technology, Management, and Budget
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CONTRACT CHANGE NOTICE

Change Notice Number 4
to
Contract Number 20000000942

CONTRACTOR	Bioreference Laboratories Inc
	481 Edward H. Ross Drive
	Elmwood Park, NJ 07407
	Patrick J. Murray
	201-410-3459
	pmurray@bioreference.com
	CV0007021

STATE	Program Manager	Jason Wilkinson	DTMB
		517-643-6992	
	Wilkinsonj5@michigan.gov		
	Contract Administrator	Sarah Walter	DTMB
517-256-4237			
walters6@michigan.gov			

CONTRACT SUMMARY

COVID-19 LAB TESTING SERVICES			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 19, 2020	May 18, 2021	1 - 1 Year	December 31, 2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	December 31, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$35,000,000.00	\$0.00	\$35,000,000.00		

Effective April 20, 2021 please note, the following language is hereby added to the Michigan Department of Corrections (MDOC) Statement of Work (SOW), Schedule A.

- 19)** Contractor is required to test staff for Covid-19 with an antigen test, each day worked, with results received and reviewed prior to performing contracted services. Any staff with a positive result will not be allowed to enter the facility for at a minimum of 10 calendar days from the date of the positive result or 10 calendar days from the onset of symptoms, whichever is later. For those staff that test positive, specifically for the purpose of this requirement, MDOC may waive daily testing for up to 90 calendar days from a positive result or 90 calendar days from the onset of symptoms, whichever is later. MDOC will not waive the daily testing when positive results were received from a source prior to the contractor working under the terms of this contract. MDOC will reimburse the contractor \$35 for each staff test performed under the requirement. MDOC acknowledges that Contractor must obtain CLIA certificates of waiver and perform mandatory on-site validations for such testing. Provided that Contractor is working diligently in good faith to obtain such certificates and perform such validations, Contractor shall not be deemed in breach of this Agreement for any failure to commence daily testing of its staff.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement and DTMB Central Procurement Services approval.



STATE OF MICHIGAN PROCUREMENT
 Department Technology, Management and Budget
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CONTRACT CHANGE NOTICE

Change Notice Number 3
 to
 Contract Number 200000000942

CONTRACTOR	Bioreference Laboratories Inc
	481 Edward H. Ross Drive
	Elmwood Park, NJ 07407
	Patrick J. Murray
	201-410-3459
	pmurray@bioreference.com
	CV0007021

STATE	Program Manager	Jason Wilkinson	DTMB
		517-643-6992	
		Wilkinsonj5@michigan.gov	
STATE	Contract Administrator	Sarah Walter	DTMB
		517-256-4237	
		Walters6@michigan.gov	

CONTRACT SUMMARY				
COVID-19 Lab Testing Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
5/19/2020	5/18/2021	1	5/18/2021	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	12/31/2021
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$35,000,000.00		\$0.00	\$35,000,000.00	
Effective March 15, 2021 please note the following:				
<p>The Michigan Department of Corrections (MDOC) is hereby updating its Statement of Work (SOW) issued in Change Notice 2, to include Antigen Testing and an additional MDOC location. Please refer to Change Notice 3 Attachment for further details.</p> <p>All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement and DTMB Central Procurement Services approval.</p>				

Change Notice 3 – 20000000942 Attachment

Schedule A – Statement of Work is hereby updated to include the following:

Michigan Department of Corrections Scope

The purpose of this contract amendment is to add an antigen testing option and new site to the contract.

1. Services

1.1 Contractor Requirements

- 18) Contractor will perform specimen collection and resulting/reporting services for visual read antigen testing upon request from MDOC. This request will be apart of the testing schedule. Antigen test kits and devices (if required) to be provided by the state. All other requirements remain the same.
- 19) Steps for reporting/resulting of test results of the visual read antigen test will be determined by mutual agreement of MDOC and the contractor.

2.0 Security

The Contractor/subcontractor and any staff assigned to this contract will be subject to the following security procedures:

- 1) No active warrants or pending charges on any staff assigned to this contract.
- 2) MDOC reserves the right to approve, decline, or remove Contractor and subcontractor staff from providing services on this Contract.
- 3) Not under investigation or under disciplinary action of the Michigan Department of Licensing and Regulatory Affairs.
- 4) Has not engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution as defined in 42 U.S.C. 1997.
- 5) Has not been convicted of engaging in, attempting to engage in or conspiracy to engage in sexual activity facilitated by force, overt or implied threats of force or coercion, or if the victim did not consent or was unable to consent or refuse.
- 6) Has not been civilly or administratively adjudicated to have engaged in the activity described in Number E. above.
- 7) The MDOC may investigate the Contractor/subcontractor's personnel before they may have access to MDOC facilities and systems. The scope of the background check is at the discretion of the MDOC and the results will be used to determine Contractor/Subcontractor's personnel eligibility for working within MDOC facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and the Law Enforcement Information Network (LEIN) and may include the National Crime Information Center (NCIC). Proposed Contractor/subcontractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Fingerprint Check. Any request for background checks will be initiated by the MDOC and will be reasonably related to the type of work requested.
- 8) The Contractor/subcontractor's personnel must be LEIN cleared and received written approval from the MDOC's Program Manager and Contract Manager initially and annually by MDOC prior to any work with MDOC offenders. Any Contractor/subcontractor staff with an identified felony conviction must receive approval through the MDOC Deputy Director or designee.
- 9) A completed LEIN Information Form for each staff assigned to the contract must be sent to the MDOC-IntegratedCare-LEINS@michigan.gov and approved by MDOC prior to Contractor/subcontractor's personnel working with MDOC offenders and annually following approval. There is no cost associated with the LEIN. The LEIN form will be provided to the Contractor.
- 10) The Contractor/subcontractor must document if a Contractor/subcontractor's personnel assigned to the Contract is related to or acquainted with an offender incarcerated and under the jurisdiction of the MDOC. For Contractor/subcontractor's personnel who are related to or

acquainted with an offender, the Contractor/subcontractor's staff member must complete the Offender Contact Exception Request (CAJ-202) and submit it to the MDOC Program Manager or designee. The Contractor must ensure its personnel and subcontractor's personnel complete the form and notify the MDOC Program Manager of any changes throughout the contract term.

- 11) The Contractor/subcontractor's personnel will be required to enter State facilities. The State may require the Contractor/subcontractor's personnel to wear State-issued identification badges.
- 12) The Contractor/subcontractor's personnel must anticipate delays when visiting any correctional facility due to issues within the facility.
- 13) The Contractor/subcontractor's personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html. Contractor/subcontractor personnel must also agree to the State's security and acceptable use policies before the Contractor/subcontractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to prospective Contractor/subcontractor personnel before the Contractor/subcontractor presents the individual to the State as a proposed resource. Contractor/subcontractor personnel must comply with all physical security procedures in place within the facilities where they are working.
- 14) The MDOC reserves the right to deny access to any correctional facility to anyone who fails to comply with any applicable State, Federal, or local law, ordinance or regulation or whose presence may compromise the security of the facility, its offenders, or staff. Weapons, alcoholic beverages, poison, and prescription drugs and controlled substances without written certification of needs from a licensed physician (does not include medical supplies for the facility), cellular devices, cameras, and audio or visual recording devices are prohibited from being brought into all MDOC correctional facilities. Tobacco products and smoking also are prohibited both inside a correctional facility and on facility grounds except as specifically authorized by MDOC policy. Wardens may prohibit other items from being brought into their respective correctional facilities.
- 15) Security is the facility's first priority and the Contractor/subcontractor and its personnel must be responsive and respectful of these needs.
- 16) The Contractor/subcontractor and its personnel must comply with and cooperate with all correctional facility rules, procedures and processes as well as State and federal laws. Contractor/subcontractor personnel must ensure that they are complying with all facility rules and regulations including, but not limited to, dress code and items allowed to be possessed.
- 17) The Contractor/subcontractor personnel must follow the facility entry, exit, manifest process, including the following:
 - a. The Contractor/subcontractor personnel will receive an orientation and training by the MDOC on security, procedures, etc., inside the correctional facility. The Contractor must maintain a copy of the Contractor/subcontractor personnel's training certificates in the appropriate file for auditing purposes.
 - b. The Contractor/subcontractor personnel must follow all MDOC rules, procedures and security processes at all times.
 - c. The Contractor must ensure that all Contractor/subcontractor personnel working in a correctional facility are familiar and in compliance with the necessary routines and increased awareness of working inside a facility. Working inside

the facility requires that the Contractor/subcontractor personnel develop positive and cooperative relationships with MDOC facility staff.

- d. The Contractor/subcontractor personnel must report any concerns, issues, or rule violations to the MDOC facility staff immediately.
 - e. The Contractor/subcontractor personnel must use the MDOC facility staff as a resource for questions and guidance working with prisoners and inside a correctional facility.
 - f. The Contractor/subcontractor personnel must defer to MDOC correctional facility staff for directions. The Contractor/subcontractor personnel must remember they are a guest in the facility and that security is the first priority of the facility.
- 18) Contractor must review the Data Security requirements set forth in **Schedule C – Data Security Requirements**. Contractor must note any exceptions to the security requirements by redlining **Schedule C – Data Security Requirements**.

Section 3.8 Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15601 – Section 3.8 is hereby added to the Contract:

- 1) The Contractor and the Contractor Personnel must comply with the Final Rule implementing PREA, all applicable PREA standards (Schedule A-1) and the agency's policies. The Contractor and Contractor Personnel must make itself familiar with and at all times must observe and comply with all PREA regulations that in any manner affect the performance under this Contract. Failure to comply with the PREA standards and related polices of the MDOC will be considered a breach of contract and may result in termination of the contract.
- 2) Contract Personnel who may have contact with prisoners must complete PREA training prior to entrance in any MDOC Facility and any other training as determined by the MDOC. Upon completion, Contractor Personnel must submit a signed memorandum to the Contract Administrator documenting completion of the training and date of completion.
- 3) As is deemed necessary, the State's Contract Monitor or Program Manager will provide the Contractor with current copies of all PREA documents via email. Any revisions to the documents will be emailed to the Contractor throughout the Contract period, and the Contractor must comply with all documentation provided.

3.9 Vendor Handbook – Section 3.9 is hereby added to the Contract:

The Contractor will require all its employees working inside an MDOC correctional facility to read and sign the MDOC Vendor Handbook (Schedule A-2) upon award of Contract. The purpose of the MDOC Vendor Handbook is to provide the Contractor with general information regarding basic requirements of working within the MDOC, provide notice of work rules, and consequences of rule violations. The Contractor must provide copies of each signed Employee Acknowledgement to the State's Program Manager at the completion of the employee's orientation.

Schedule B – Pricing is hereby updated to include pricing from:

MDOC Specific Pricing: Staffing for specimen collection, resulting and reporting of antigen test with antigen test kits and devices (if required) provided by the State: \$35

Exhibit 2 – MDOC Site Listing

The following site is added to the Exhibit 2 – MDOC Site Listing:

WHV – Womens' Huron Valley	3201 Bemis Road	Ypsilanti	MI	48197
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STATE OF MICHIGAN PROCUREMENT
 Department Technology, Management and Budget
 525 W. Allegan Street, Lansing, Michigan 48913
 PO BOX 30026 Lansing, Michigan 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**
 to
 Contract Number **20000000942**

Bioreference Laboratories Inc
481 Edward H. Ross Drive
Elmwood Park, NJ 07407
Patrick J. Murray
201-410-3459
pmurray@bioreference.com
CV0007021

STATE	Program Manager	Jason Wilkinson	DTMB
		517-643-6992	
		Wilkinsonj5@michigan.gov	
Contract Administrator	Sarah Walter	DTMB	
		517-256-4237	
		Walters6@michigan.gov	

CONTRACT SUMMARY

COVID-19 Lab Testing Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
5/19/2020	5/18/2021	1	5/18/2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	12/31/2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$10,000,000.00	\$25,000,000.00	\$35,000,000.00		

Effective January 29, 2021 please note the following:

- The Michigan Department of Corrections (MDOC) is hereby authorized to utilize Contracted Services.**
 - Please note Program Manager for MDOC is Marti Kay Sherry: 517-241-9902; SherryM@michigan.gov
 - Please refer to Change Notice 2 Attachment, for updates to Schedule A –Statement of Work and Schedule B – Pricing.
 - Please refer to Exhibit 2 – for MDOC Site Listing
- The State's Program Manager is hereby updated to:** Jason Wilkinson: 517-643-6992; Wilkinsonj5@michigan.gov.
- The State is exercising the option available under Contract, the revised expiration date is: December 31, 2021.**
- This Contract is hereby increased \$25,000,000.00,** to account for weekly MDOC testing.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, and DTMB Central Procurement Services approval.

Change Notice 2 – 20000000942 Attachment

Schedule A – Statement of Work is hereby updated to include the following:

Michigan Department of Corrections Scope

The purpose of this contract amendment is to add the Michigan Department of Corrections testing program to the contract.

1. Services

1.1 Contractor Requirements

- 1) Contractor will provide specimen collection teams to perform specimen collection for both inmates and staff at the MDOC facilities set forth in Exhibit 2. Specimen collection teams will include all appropriate healthcare personnel to meet MDOC's testing needs as set forth in this Contract. All specimen collection staff are required to be trained on proper collection techniques and the collections process. All specimen collection is to be performed by contractor personnel, at no point are staff or prisoners allowed to perform self-swabbing. All contractor staff will go through facility-based training at the direction of MDOC once testing commences.
- 2) All contractor staff must be LEIN cleared by MDOC before entering the facility, any staff that have not been LEIN cleared will not be approved for entry.
- 3) Contractor to provide all specimen collection materials necessary to perform a shallow nasal swab.
- 4) Contractor will provide all required PPE for Contractor personnel to perform the specimen collection.
- 5) Contractor to provide a courier service and shipping materials to ensure return of specimens to the appropriate Contractor laboratory facility.
- 6) Contractor will develop a testing schedule in partnership with MDOC. This testing schedule will include testing at all MDOC identified facilities once per week. Facilities may be added or removed at the direction of MDOC. Any site additions to the testing schedule will require a 10-day notice to Contractor so that Contractor can adjust staff, provide adequate collection supplies and obtain any necessary specimen collection permits required by the state or county. MDOC will provide 72-hour notice for any site removal.
- 7) Testing start dates will be staggered across regions to allow time for a proper scaling of resources.
- 8) The Contractor will perform all Covid-19 test diagnostics within 48 hours of receipt of patient specimens in Contractor's laboratory facility.
 - a. Daily MDOC can prioritize an aggregate of 50 specimens as priority. These specimens are required to be resultated within 48 hours upon receipt in Contractor's laboratory facility. Any of these 50 daily priority specimens not resultated within these 48 hours will be processed at no charge.
- 9) The Contractor will set up each MDOC with two accounts, one for staff and one for inmates.
 - a. Access to the staff accounts will be limited to MDOC HR personnel
 - b. Access to the inmate accounts will be the Director of Nursing for the facility and identified facility healthcare staff.
- 10) Contractor will make results available within the Contractor's online portal for each account within two hours of test results being confirmed.
 - a. In addition, individual staff results will be sent to the staff members secured email account, if the email is provided to Contractor.
- 11) All facility accounts should roll up to a general administrative account for all MDOC facilities.
- 12) Contractor will provide daily reports to MDOC leadership documenting number of specimens collected and number of tests performed. This should be filtered by staff and inmate specimens.
- 13) Contractor must continue to provide supplies and testing capacity through the term of the Contract,
- 14) The State of Michigan will issue a Purchase Order (PO) to grant authorization for work to begin.
- 15) Invoices are to be sent to the State after test results are reported. Invoices must include:
 - a. Collection Date,
 - b. Collection Location,
 - c. Total Number of Tests
 - d. Delivery order number
- 16) Contractor will ensure that all staff are aware of the restrictions within the prison facilities including no cell phones, no tobacco etc.
- 17) MDOC shall obtain from its staff and inmates all necessary consents to obtain COVID-19 testing and authorizations for Laboratory to release COVID-19 test results to MDOC as required under applicable federal and state laws and regulations.

Schedule B – Pricing is hereby updated to include pricing from:

MDOC Specific Pricing: All Inclusive nasal swab PCR test collected \$105 per test.



STATE OF MICHIGAN PROCUREMENT
 Department Technology, Management and Budget
 525 W. Allegan Street, Lansing, Michigan 48913
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CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **20000000942**

CONTRACTOR	Bioreference Laboratories Inc
	481 Edward H. Ross Drive
	Elmwood Park, NJ 07407
	Patrick J. Murray
	201-410-3459
	pmurray@bioreference.com
	CV0007021

STATE	Program Manager	Dr. Sandip Shah	DHHS
		517-335-8063	
		shahs@michigan.gov	
STATE	Contract Administrator	Sarah Walter	DTMB
		517-256-4237	
		Walters6@michigan.gov	

CONTRACT SUMMARY				
COVID-19 Lab Testing Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
5/19/2020	5/18/2021	1	5/18/2021	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	N/A
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$2,500,000.00		\$7,500,000.00	\$10,000,000.00	
Effective July 10, 2020 please note this Contract has been increased by \$7,500,000.00 for the Department of Health and Human Services (DHHS).				
All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, and DTMB Central Procurement Services approval.				



STATE OF MICHIGAN PROCUREMENT
 Department of Technology Management and Budget
 525 W Allegan Lansing MI

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **200000000942**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Bioreference Laboratories Inc
	481 Edward H. Ross Drive
	Elmwood Park, NJ 07407
	PATRICK J. MURRAY
	201.410.3459
	pmurray@bioreference.com
	CV0007021

STATE	Program Manager	Dr Sandip Shah	DHHS
		517-335-8063	
	shahs@michigan.gov		
	Contract Administrator	Sarah Walter	DTMB
517-256-4237			
WalterS6@michigan.gov			

CONTRACT SUMMARY			
DESCRIPTION: Covid 19 Lab Testing Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
5/19/2020	5/18/2021	1	1
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			2,500,000

FOR THE CONTRACTOR:

Bioreference Laboratories
Company Name

Authorized Agent Signature

Jane Pine Wood
Authorized Agent (Print or Type)

5/20/2020
Date

FOR THE STATE:

Signature

Jared Ambrosier -
Name & Title

DTMB – Central Procurement Services
Agency

5/20/20
Date



STATE OF MICHIGAN

COVID-19 Test Kits and Laboratory Services SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND AND SCOPE

The purpose of this Contract is to provide Covid-19 test collection kits and diagnostic lab testing capacity to support the State of Michigan testing efforts.

1. Services

1.1 Contractor Requirements

Contractor will provide the following:

- 1) The Contractor must maintain a Clinical Laboratory Improvement Amendments (CLIA) high complexity license using tests and tools that are approved for use under the Food and Drug Administration (FDA) Emergency Use Authorizations and is performed under the appropriate CLIA certification level.
- 2) The Contractor must provide all Covid-19 test collection supplies, not including PPE, delivered to the State of Michigan in weekly shipments to meet the specimen run rate as defined on the Purchase Order (PO).
- 3) The Contractor must provide shipping materials to return collected samples or a courier services to pick up collected materials.
- 4) The Contractor will use its best efforts perform all Covid-19 test diagnostics within 48 hours of receipt of patient specimens.
- 5) The Contractor must provide all laboratory equipment and diagnostic supplies to maintain a specimen run rate as defined on the Purchase Order (PO).
- 6) All lab results must be delivered to the Michigan Disease Surveillance System (MDSS) within 24 hours after completion of testing via standardized HL7 v.2.5.1 compliant transactional electronic laboratory

reports (ELR). ELR must be sent via a qualified Health Information Exchange in the State of Michigan (such as MIHIN). The ELR must also be in conformance with Michigan's standard for ELR submissions to the MDSS which can be found at <https://michiganhealthit.org/public-health/mdss/>

- 7) Results must include:
 - a. Date of sample collection
 - b. Location of sample collection
 - c. The patient's full name
 - d. The patient's residential address, including street, city, village or township, county, and zip code
 - e. The patient's telephone number
 - f. The patient's date of birth (or age)
 - g. The patient's sex
 - h. The patient's race/ethnicity
 - i. The name of the disease, infection, or condition reported and date of onset if known
- 8) Tests collected from individuals in government custody shall also provide:
 - a. Prisoner ID,
 - b. Facility
 - c. Unit
- 9) The contractor will bill the State of Michigan at the rate defined in Schedule B – Pricing for all patients.
- 10) Contractor must continue to provide supplies and testing capacity until the time period on the Purchase Order (PO) expires. Please Note, timeframes for service(s) will be listed on all PO documents issued for service. The State may extend this agreement with a seven-day notice.
- 11) The State of Michigan will issue a Purchase Order (PO) to grant authorization for work to begin.
- 12) Invoices are to be sent to the State after test results are reported. Invoices must include:
 - a. Collection Date,
 - b. Collection Location,
 - c. Total Number of Tests
 - d. Delivery order number

1.2 Specific Standards

IT Policies, Standards and Procedures (PSP)

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this contract must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

Public IT Policies, Standards and Procedures (PSP):

https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html

Please Note: Not all applicable PSP's are available publicly. Controlled PSP's applicable to the contract are available after signing and returning to the State the required Nondisclosure Agreement (NDA) agreement.

Secure Application Development Life Cycle (SADLC)

Contractor is required to meet the States Secure Application Development Life Cycle requirements that includes:

Application Scanning

Contractor is required to scan either the application code or a deployed version of the solution. Contractor is required to use a industry standard application scanning tool. These scans must be completed on a regular basis or at least for each major release.

For COTS or Contractor owned applications, Contractor, at its sole expense, must provide resources to complete the scanning and to complete the analysis, remediation and validation of vulnerabilities identified by the scan as required by the State Secure Web Application Standards.

Application scanning and remediation must include the following types of scans and activities:

- Dynamic Application Security Testing (DAST) - Scanning interactive application for vulnerabilities, analysis, remediation and validation (May include IAST)
- Static Application Security Testing (SAST) - Scanning source code for vulnerabilities, analysis, remediation and validation

Application scanning and remediation may include the following types of scans and activities as required based on data classification and/or composition:

- Software Composition Analysis (SCA) - Third Party and/or Open Source Scanning for vulnerabilities, analysis, remediation and validation
- Native mobile application software scanning (if applicable) including any interaction with an Application Programming Interface (API)
- Penetration Testing - Simulated attack on the application and infrastructure to identify security weaknesses

Infrastructure Scanning

A Contractor providing Hosted Services must scan the infrastructure using an industry standard scanning tool (Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least once every 30 days and remedy any identified vulnerabilities promptly and timely.

Acceptable Use Policy

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see:

https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

SOM Digital Standards

All software items provided by the Contractor must adhere to the State of Michigan Application/Site Standards which can be found at www.michigan.gov/standards.

ADA Compliance

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. The State is requiring that Contractor's proposed Solution, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may consider, where relevant, the W3C's Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT) for non-web software and content. The State may require that Contractor complete a Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or other comparable document for the proposed Solution.

http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621

1.3 End-User Operating Environment

Development teams must accommodate the latest browser versions (including mobile browsers) as well as some pre-existing browsers. To ensure that users with older browsers are still able to access online services, applications must, at a minimum, display and function correctly in standards-compliant browsers and the state standard browser without the use of special plugins or extensions. The rules used to base the minimum browser requirements include:

- Over 2% of site traffic, measured using Sessions or Visitors (or)
- The current browser identified and approved as the State of Michigan standard

This information can be found at www.michigan.gov/browserstats. Please use the most recent calendar quarter to determine browser statistics. For those browsers with over 2% of site traffic, except Internet Explorer which requires support for at minimum version 11, the current browser version as well as the previous two major versions must be supported.

Contractor must support the current and future State standard environment at no additional cost to the State.

2. Acceptance

2.1. Acceptance, Inspection and Testing

The State will consider orders as accepted when test results are properly submitted into the Michigan Disease Surveillance System.

3. Staffing

3.1. Contractor Representative

The Contractor must appoint one person, an Account Manager, who will be specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 10-calendar days before removing or assigning a new Contractor Representative.

3.2 Contract Administrator

The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "Contract Administrator"):

State:	Contractor:
Sarah Walter 525 W. Allegan Lansing, MI 48913 WalterS6@michigan.gov 517-256-4237	PATRICK J. MURRAY 481 Edward H. Ross Drive Elmwood Park, NJ 07407 pmurray@bioreference.com 201.410.3459

3.3 Program Manager

The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State:	Contractor:
Dr Sandip Shah State of Michigan Department of Health and Human Services Bureau of Laboratories 517-335-8063 shahs@michigan.gov	PATRICK J. MURRAY 481 Edward H. Ross Drive Elmwood Park, NJ 07407 pmurray@bioreference.com 201.410.3459

3.4. Customer Service Toll-Free Number

The Contractor must specify its toll-free number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

3.5. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

The relationship of the subcontractor to the Contractor.

Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

A complete description of the Contract Activities that will be performed or provided by the subcontractor.

3.6. Security

The Contractor will be subject the following security procedures:

Contractor must review the Data Security requirements set forth in **Schedule C – Data Security Requirements**. Contractor must note any exceptions to the security requirements by redlining **Schedule C – Data Security Requirements**.

4. Pricing

4.1. Price Term

Pricing is firm for the entire length of the Contract.

4.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be a delivery order.

6. Invoice and Payment

6.1. Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

6.2. Payment Methods

The State will make payment for Contract Activities by Electronic Fund Transfer (EFT).

STATE OF MICHIGAN

SCHEDULE B PRICING

TEST NAME	CLIENT PRICE
Covid-19 PCR Diagnostic	\$100.00



STATE OF MICHIGAN

CONTRACT TERMS FOR COVID-19 TESTING KITS AND LABORATORY SERVICES

This CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and BIOREFERENCE LABORATORIES, INC. (“**Contractor**”), a State of New Jersey Corporation. This Contract is effective on May 19, 2020 (“**Effective Date**”), and unless terminated, expires on May 18, 2021

This Contract may be renewed for up to one, one year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

1. **Definitions.** For the purposes of this Contract, the following terms have the following meanings:

“**Accept**” has the meaning set forth in **Section 18**.

“**Acceptance**” has the meaning set forth in **Section 18**.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person.

“**Allegedly Infringing Materials**” has the meaning set forth in **Section 28**.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which the State is authorized or required by Law to be closed for business.

“**Business Owner**” is the individual appointed by the agency buyer to (a) act as the agency’s representative in all matters relating to the Contract, and (b) co-sign of Acceptance. The Business Owner will be identified in the Statement of Work.

“Change” has the meaning set forth in **Section 5**.

“Change Notice” has the meaning set forth in **Section 5**.

“Change Proposal” has the meaning set forth in **Section 5**.

“Change Request” has the meaning set forth in **Section 5**.

“Confidential Information” has the meaning set forth in **Section 31.a**.

“**Contract**” has the meaning set forth in the preamble.

“**Contract Activities**” refers to the includes the Services, Deliverables, delivery of commodities, or other contractual requirements set forth in **Schedule A – Statement of Work**, including any subsequent Statement(s) of Work, that the Contractor agrees to provide and the State agrees to purchase pursuant to the terms of this Contract.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party’s Contract Administrator will be identified in the Statement of Work.

“**Contractor**” has the meaning set forth in the preamble.

“Contractor’s Bid Response” means the Contractor’s proposal submitted in response to the State’s requests to obtain Contract Activities.

“Contractor Personnel” means all employees of Contractor or any Permitted Subcontractors involved in the performance of Services hereunder.

“Deliverables” means all materials, including, but not limited to Software, Documentation, written materials and commodities, that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in **Schedule A - Statement of Work**.

“Dispute Resolution Procedure” has the meaning set forth in **Section 43**.

“DTMB” means the Michigan Department of Technology, Management and Budget.

“Effective Date” has the meaning set forth in the preamble.

“Fees” means collectively all fees collected by the Contractor pursuant to the terms of this Contract.

“Financial Audit Period” has the meaning set forth in **Section 33**. **“HIPAA”** has the meaning set forth in **Section 38**.

“Intellectual Property Rights” means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

“Key Personnel” means any Contractor Personnel identified as key personnel in **Schedule A – Statement of Work**.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“Loss or Losses” means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Permitted Subcontractor” has the meaning set forth in **Section 11**.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“Pricing” means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule or Exhibit hereto.

“Pricing Schedule” means the schedule attached as **Schedule B**, setting forth the Fees, rates and Pricing payable under this Contract.

“Program Manager” is the individual appointed by each party to (a) monitor and coordinate the day-to-day activities of this Contract, and (b) for the State, to co-sign off on its notice of Acceptance of the Deliverables. Each party’s Program Manager will be identified in the Statement of Work.

“Representatives” means a party’s employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

“RFP” means the State’s request designed to solicit responses for Contract Activities under this Contract.

“**Services**” means any of the services Contractor is required to or otherwise does provide under this Contract and **Schedule A - Statement of Work**.

“**Site**” means the physical location designated by the State in, or in accordance with, this Contract or the Statement of Work for delivery or installation of the Contract Activities.

“**State**” means the State of Michigan.

“**State Data**” has the meaning set forth in **Section 30.a**.

“**State Materials**” means all materials and information, including equipment, documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

“**Statement of Work**” means any statement of work entered into by the parties and attached as a schedule to this Contract. The initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedules A-1, A-2, A-3, etc.

“**Stop Work Order**” has the meaning set forth in **Section 23**.

“**Term**” has the meaning set forth in the preamble.

“**Third Party**” means any Person other than the State or Contractor.

“**Transition Period**” has the meaning set forth in **Section** Error! Reference source not found..

“**Transition Responsibilities**” has the meaning set forth in **Section** Error! Reference source not found..

“**Warranty Period**” means the period set forth in Schedule A, the Statement of Work, commencing on the date of acceptance of all Deliverables purchased pursuant to the terms of this Contract.

“**Work Product**” means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to test results, written materials, computer scripts, software configuration, software customization, APIs, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract. Work Product does not include software.

2. **Duties of Contractor.** Contractor must perform the Services and provide the Deliverables described in **Schedule A – Statement of Work**. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Schedule A**.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

3. **Statement(s) of Work.** Contractor shall provide the Contract Activities pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Sections 24** and **Error! Reference source not found.** Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work is strictly required.
4. **Statement of Work Requirements.** Each Statement of Work may include the following: (a) names and contact information for Contractor's Contract Administrator, Program Manager and Key Personnel; (b) names and contact information for the State's Contract Administrator, Program Manager and Business Owner; (c) a detailed description of the Services to be provided under this Contract, including any training obligations of Contractor; (d)

a detailed description of the Deliverables to be provided under this Contract; (e) a description of all liquidated damages associated with this Contract, if any; and (f) a detailed description of all State Resources, if any, required to complete the Implementation Plan, if such a Plan is necessary.

- 5. Change Control Process.** The State may at any time request in writing (each, a “Change Request”) changes to the Statement of Work, including changes to the Contract Activities (each, a “Change”). Upon the State’s submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this **Section 5**. No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Contractor may, on its own initiative and at its own expense, prepare and submit its own Change Request to the State. However, the State will be under no obligation to approve or otherwise respond to a Change Request initiated by Contractor.
- 6. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State: Sarah Walter 525 W. Allegan Lansing, MI 48913 WalterS6@michigan.gov 517-256-4237	If to Contractor: PATRICK J. MURRAY 481 Edward H. Ross Drive Elmwood Park, NJ 07407 pmurray@bioreference.com 201.410.3459
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- 7. Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
- 8. Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (i) protect the State from claims that arise out of, are alleged to arise out of, or otherwise result from Contractor's or subcontractor's performance; (ii) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (iii) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.
Automobile Liability Insurance	
If one or more vehicles are used to perform the Contract Activities, Contractor must maintain motor vehicle liability coverage for bodily injury and property damage as required by law for the term of the Contract.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any required policies provide claims-made coverage, the Contractor must: (i) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (ii) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities;

and (iii) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (i) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (ii) require that subcontractors maintain the required insurances contained in this Section; (iii) notify the Contract Administrator within five (5) business days if any policy is cancelled; and (iv) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Ownership of Test Results.** Test results are considered State Data. Notwithstanding the foregoing, the State acknowledges and agrees that Contractor is required under federal and state laws and regulations to retain a copy of all test results.
11. **Subcontracting.** Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any Third Party to perform Services. The State's approval of any such Third Party (each approved Third Party, a "**Permitted Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will: (a) be responsible and liable for the acts and omissions of each such Permitted Subcontractor (including such Permitted Subcontractor's employees who, to the extent providing Services or Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees; (b) name the State a third party beneficiary under Contractor's Contract with each Permitted Subcontractor with respect to the Services; (c) be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and (d) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.
12. **Staffing.** Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
13. **Key Personnel.** If, in the sole discretion of the State, Key Personnel are required to complete the Contract Activities, such Key Personnel shall be identified in **Schedule A - Statement of Work**. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Program Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Section 24.

It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 24**, Contractor will issue to the State an amount set forth in **Schedule A – Statement of Work** (each, an “Unauthorized Removal Credit”).

14. **Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
15. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
16. **Change of Control.** Contractor will notify within 30 days of any public announcement, or otherwise once legally permitted to do so, the State of a change in Contractor’s organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor’s stock; (b) a sale of substantially all of Contractor’s assets; (c) a change in a majority of Contractor’s board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.
17. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
18. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State’s receipt of them (“**State Review Period**”), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with **Section 24**, Termination for Cause.

Within 10 business days from the date of Contractor’s receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties’ respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 19. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
- 20. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
- 21. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 30 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Schedule A**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 22. Payment Disputes.** The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State: (a) timely renders all payments and amounts that are not in dispute; notifies Contractor of the dispute prior to the due date for payment, specifying in such notice: (i) the amount in dispute; and (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties; (b) works with Contractor in good faith to resolve the dispute promptly; and (c) promptly pays any amount determined to be payable by resolution of the dispute.

Contractor shall not withhold any Contract Activities or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 22** or any dispute arising therefrom.

- 23. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 24. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, (b) continue to perform for a specified period; (c) if approved by the State, test any samples already received or in transit at the time of termination and provide results; or (d) comply with other instructions as provided by the State. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section Error! Reference source not found.**, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 25. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately; (b) continue to perform for a specified period; (c) if approved by the State, test any samples already received or in transit at the time of termination and provide results; or (d) comply with other instructions as provided by the State. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved tests.
- 26. Effect of Termination.** Upon and after the termination or expiration of this Contract or one or more Statements of Work for any or no reason: (a) all licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any; (c) Contractor will: (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of **Section 24 or Error! Reference source not found.**, as applicable, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.
- 27. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

28. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
29. **Limitation of Liability and Disclaimer of Damages.** THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.
30. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of and as it materially relates to provision of services under, the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract. **State Data.** If with respect to the testing and laboratory services provided as set forth in the applicable Statement of Work, Contractor, including any Permitted Subcontractors, must also comply with **Schedule C – Data Security Requirements** of this Contract
- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
 - b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract, in applicable SOM PSP's, and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
 - c. **Extraction of State Data.** Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
 - d. **Backup and Recovery of State Data.** Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless

otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.

- e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than forty eight(48) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within fifteen (15) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 30** are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

31. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their

respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

32. Data Privacy and Information Security.

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

- 33. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 34. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) Contractor will perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (c) Contractor will meet or exceed the performance and operational standards, and specifications of the Contract; (d) Contractor will provide all Contract Activities in good quality, with no material defects; (e) Contractor will not interfere with the State's operations; (f) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (g) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (h) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (i) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (j) the Contract signatory has the authority to enter into this Contract; (k) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (l) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (m) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 24**, Termination for Cause.
- 35. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 36. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 37. ADA Compliance.** The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Contractor's Service Software must comply, where relevant, with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.
- 38. HIPAA Compliance.** The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

- 39. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 40. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 41. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 42. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 43. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
- 44. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written approval by all parties hereto, and then only in accordance with the explicit written instructions of the State.
- 45. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 46. Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	Pricing and Fees
Schedule C (as applicable)	Data Security Requirements
Schedule D	Business Associate Agreement between Contractor and DTMB, acting on behalf of DHHS
Schedule E	Federal Provisions Addendum

- 47. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements

between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ITS AUTHORIZED USERS FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

48. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
49. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
50. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

SCHEDULE C

Data Security Requirements

1. Definitions. For purposes of this Exhibit, the following terms have the meanings set forth below. All initial capitalized terms in this Exhibit that are not defined in this **Section** Error! Reference source not found. shall have the respective meanings given to them in the Contract.

“**Contractor Security Officer**” has the meaning set forth in **Section** Error! Reference source not found. of this Exhibit.

“**Contractor Systems**” has the meaning set forth in **Section** Error! Reference source not found. of this Exhibit.

“**FedRAMP**” means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

“**FISMA**” means The Federal Information Security Modernization Act of 2014 (Pub.L. No. 113-283 (Dec. 18, 2014)).

“**Hosting Provider**” identifies a separate third party subcontractor that is providing any of the hosting services including management and operation of computing hardware, ancillary equipment, networking, Software, firmware, data, other services used to provide Hosted Services; typically identified as a cloud provider.

“**Hosted Services**” means the hosting, management and operation of the computing hardware, ancillary equipment, networking, Software, firmware, data, other services (including support services), subcontractors, and related resources for remote electronic access and use by the State and its Authorized Users, including any services and facilities related to disaster recovery obligations.

“**NIST**” means the National Institute of Standards and Technology.

“**PSP**” means the State’s IT Policies, Standards and Procedures.

2. Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto (“**Contractor Security Officer**”). The Contractor Security Officer will be considered Key Personnel under the Contract.

3. Protection of the State’s Confidential Information. Throughout the term of the Agreement and at all times in connection with its actual or required performance of the Services, Contractor will:

- 3.1. maintain industry standards (e.g. HIPAA / HITRUST) for all Hosting Provider environments SOM data or running software with access to SOM data throughout the Term

3.2. Contractor must maintain an annual SSAE 18 SOC 1 audit based on NIST moderate controls for the Hosted Services throughout the Term;

3.3. ensure that the Software is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States, and meets HIPAA and SSAE 18 standards, or its equivalent;

3.4. maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in the Contract, and must, at a minimum, remain compliant with the NIST Special Publication 800-53 (most recent version) Mod Controls using minimum control values as established in the applicable SOM PSP's;

3.5. provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of the State's Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards;

3.6. take all reasonable measures to:

- (a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and
- (b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State's Confidential Information;

3.7. ensure that State Data is encrypted in transit and at rest using AES encryption and a key size of 128 bits or higher encryption;

3.8. ensure that State Data is encrypted in transit and at rest using FISMA / FIPS PUB 140-2 validated encryption modules

3.9. ensure the solution is capable of remaining compliant with all applicable regulatory and industry requirements including HIPAA;

3.10. ensure the Hosted Services requires FIPS/NIST compliant multi-factor authentication for privileged/administrative and other identified access; and

4. Unauthorized Access. Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Exhibit, and in no case exceed the scope of the State's authorization pursuant to this **Section** Error!

Reference source not found.. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

5. Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor in connection with the Services ("**Contractor Systems**") and shall prevent unauthorized access to State systems through the Contractor Systems.

6. Security Audits. During the Term, Contractor will:

6.1. maintain complete and accurate records relating to its data protection practices, IT security controls, and the security logs of any of the State's Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State's Confidential Information and any other information relevant to its compliance with this Exhibit;

6.2. upon the State's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Contractor Systems and their housing facilities and operating environments; and

6.3. if requested by the State, provide a copy of Contractor's HITRUST certification or SSAE 18 SOC 1 Type 2 audit report to the State within thirty (30) days after Contractor's receipt of such report . The System Security Plan and SOC reports will be recognized as Contractor's Confidential Information.

7. Nonexclusive Remedy for Security Breach. Any failure of the Services to meet the requirements of this Exhibit with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

SCHEDULE D

BUSINESS ASSOCIATE AGREEMENT

The parties to this Business Associate Agreement ("Agreement") are the Michigan Department of Technology, Management and Budget ("DTMB", "Business Associate 1") on behalf of Michigan Department of Health and Human Services ("DHHS", "Covered Entity") and **BIOREFERENCE LABORATORIES, INC.** "Business Associate 2".

RECITALS

- A. Under this Agreement, Business Associate 2 will collect or receive certain information on the Covered Entity's behalf, some of which may constitute Protected Health Information ("PHI"). In consideration of the receipt of PHI, the Business Associate agrees to protect the privacy and security of the information as set forth in this Agreement.
- B. Covered Entity and each Business Associate intend to protect the privacy and provide for the security of PHI collected or received by the Business Associate under the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and the HIPAA Rules, as amended.
- C. The HIPAA Rules require the Covered Entity to enter into an agreement containing specific requirements with Business Associate 1, and likewise Business Associate 1 must enter an agreement with Business Associate 2 before the Business Associate 2's receipt of PHI.

AGREEMENT

1. Definitions.

a. The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach; Data Aggregation; Designated Record Set; Disclosure; Health Care Obligations; Individual; Minimum Necessary; Notice of Privacy Practices; Protected Health Information; Required by Law; Secretary; Security Incident; Security Measures, Subcontractor; Unsecured Protected Health Information, and Use.

b. "Business Associate" has the same meaning as the term "business associate" at 45 CFR 160.103 and regarding this Agreement means DTMB ("Business Associate 1") and BioReference Laboratories, Inc. ("Business Associate 2").

c. "Covered Entity" has the same meaning as the term "covered entity" at 45 CFR 160.103 and regarding this Agreement means the **Michigan Department of Health and Human Services.**

d. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations of Business Associate 2.

Business Associate 2 agrees to:

- a. use and disclose PHI only as permitted or required by this Agreement or as required by law.
- b. implement and use appropriate safeguards and comply with Subpart C of 45 CFR 164 regarding electronic protected health information, to prevent use or disclosure of PHI other than as provided in this Agreement. Business Associate 2 must maintain, and provide a copy to the Covered Entity and Business Associate 1 within 10 days of a request from the Covered Entity or Business Associate 1, a comprehensive written information privacy and security program that includes security measures that reasonably and appropriately protect the confidentiality,

integrity, and availability of PHI relative to the size and complexity of Business Associate 2's operations and the nature and the scope of its activities.

c. report to the Covered Entity and Business Associate 1 within 24 hours of any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. If Business Associate 2 is responsible for any unauthorized use or disclosure of PHI, it must promptly act as required by applicable federal and State laws and regulations. Covered Entity and Business Associate 2 will cooperate in investigating whether a breach has occurred, to decide how to provide breach notifications to individuals, the federal Health and Human Services' Office for Civil Rights, and potentially the media.

d. ensure, according to 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate 2 agree to the same restrictions, conditions, and requirements that apply to Business Associate 2 regarding such information. Each subcontractor must sign an agreement with Business Associate 2 containing substantially the same provisions as this Agreement and further identifying Business Associate 1 and Covered Entity as a third-party beneficiary of the agreement with the subcontractor. Business Associate 2 must implement and maintain sanctions against subcontractors that violate such restrictions and conditions and must mitigate the effects of any such violation.

e. make available PHI in a Designated Record Set to the Covered Entity within 10 days of a request from the Covered Entity to satisfy the Covered Entity's obligations under 45 CFR 164.524.

f. within ten days of a request from the Covered Entity, amend PHI in a Designated Record Set under, 45 CFR § 164.526. If any individual requests an amendment of PHI directly from Business Associate 2 or its agents or subcontractors, Business Associate 2 must notify the Covered Entity in writing within five days of the request and amend the information within ten days of the request. Any denial of amendment of PHI maintained by Business Associate 2 or its agents or subcontractors is the responsibility of Business Associate 2.

g. maintain, and within ten days of a request from the Covered Entity make available, the information required to provide an accounting of disclosures to enable the Covered Entity to fulfill its obligations under 45 CFR § 164.528. Business Associate 2 is not required to provide an accounting to the Covered Entity of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.506; (ii) to individuals of PHI about them as set forth in 45 CFR § 164.502; (iii) under an authorization as provided in 45 CFR § 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR § 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5); (vii) as part of a limited data set according to 45 CFR 164.514(e); or (viii) that occurred before the compliance date for the Covered Entity. Business Associate 2 agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate 2 and its agents or subcontractors for at least six years before the request, but not before the compliance date of the Privacy Rule. At a minimum, such information must include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or a copy of the written request for disclosure. If the request for an accounting is delivered directly to Business Associate 2 or its agents or subcontractors, Business Associate 2 must, within ten days of the receipt of the request, forward it to the Covered Entity in writing.

h. to the extent Business Associate 2 is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity when performing those obligations.

i. make its internal practices, books, and records relating to Business Associate 2's use and disclosure of PHI available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business Associate 2 must concurrently provide to the Covered Entity a copy of any PHI that the Business Associate 2 provides to the Secretary.

j. retain all PHI throughout the term of the Agreement and for a period of six years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation survives the termination of the Agreement.

k. implement policies and procedures for the final disposition of PHI and the hardware and equipment on which it is stored, including but not limited to, removal of PHI before re-use.

l. within ten days of a written request by the Covered Entity, Business Associate 2 and its agents or subcontractors must allow the Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI under this Agreement. Business Associate 2 and the Covered Entity will mutually agree in advance upon the scope, timing and location of such an inspection. Covered Entity must protect the confidentiality of all confidential and proprietary information of Business Associate 2 to which the Covered Entity has access during the course of such inspection. Covered Entity and Business Associate 2 will execute a nondisclosure agreement, if requested by the other party. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate 2's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate 2 of its responsibility to comply with this Agreement. Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, does not constitute acceptance of such practice or a waiver of the Covered Entity's enforcement rights under this Agreement.

3. Permitted Uses and Disclosures by the Business Associate.

a. Business Associate 2 may use or disclose PHI:

(1) for the proper management and administration of Business Associate 2 or to carry out the legal responsibilities of Business Associate 2; provided, however, either (A) the disclosures are required by law, or (B) Business Associate 2 obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate 2 of any instances of which it is aware in which the confidentiality of the information has been breached;

(2) as required by law;

(3) for Data Aggregation services relating to the health care operations of the Covered Entity;

(4) to de-identify, consistent with 45 CFR 164.514(a) – (c), PHI it receives from the Covered Entity.

If Business Associates 2 de-identifies the PHI it receives from the Covered Entity, Business Associate 2 may use the de-identified information for any purpose not prohibited by the HIPAA Rules; and

(5) for any other purpose listed here: Purposes outside the scope of the Contract are not permissible.

b. Business Associate 2 agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

c. Business Associate 2 may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity except for the specific uses and disclosures described above in 3(a)(i) and (iii).

4. Covered Entity's Obligations

Covered entity agrees to:

- a. use its Security Measures to reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of PHI transmitted to Business Associate 2 under this Agreement until the PHI is received by Business Associate 2.
- b. provide Business Associate 2 with a copy of its Notice of Privacy Practices and must notify the Business Associate of any limitations in the Notice of Privacy Practices of the Covered Entity under 45 CFR 164.520 to the extent that such limitation may affect Business Associate 2's use or disclosure of PHI.
- c. notify Business Associate 2 of any changes in, or revocation of, the permission by an individual to use or disclose the individual's PHI to the extent that such changes may affect Business Associate 2's use or disclosure of PHI.
- d. notify Business Associate 2 of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR 164.522 to the extent that such restriction may affect Business Associate 2's use or disclosure of PHI.

5. Term. This Agreement continues in effect until terminated or is replaced with a new agreement between the parties containing provisions meeting the requirements of the HIPAA Rules, whichever first occurs.

6. Termination.

a. Material Breach. In addition to any other provisions in the Agreement regarding breach, a breach by Business Associate 2 of any provision of this Agreement, as determined by the Covered Entity, constitutes a material breach of the Agreement and provides grounds for Business Associate 1 to terminate this Agreement for cause at the request of Covered Entity. Termination for cause is subject to 6.b.:

(1) Default. If Business Associate 2 refuses or fails to timely perform any of the provisions of this Agreement, the Covered Entity may notify Business Associate 2 in writing of the non-performance, and if not corrected within thirty days, Business Associate 1 may immediately terminate the Agreement at the request of Covered Entity. The Business Associate 2 must continue performance of the Agreement to the extent it is not terminated.

(2) Business Associate 2's Duties. Notwithstanding termination of the Agreement, and subject to any directions from the Covered Entity or Business Associate 1, Business Associate 2 must protect and preserve property in the possession of Business Associate 2 in which the Covered Entity has an interest.

(3) Erroneous Termination for Default. If Business Associate 1 terminates this Agreement at the request of Covered Entity under Section 6(a) and after such termination it is determined, for any reason, that Business Associate 2 was not in default, then such termination will be treated as a termination for convenience, and the rights and obligations of the parties will be the same as if the Agreement had been terminated for convenience.

b. Reasonable Steps to Cure Breach. If the Covered Entity or Business Associate 1 knows of a pattern of activity or practice of Business Associate 2 that constitutes a material breach or violation of Business Associate 2's obligations under the provisions of this Agreement or another arrangement and does not terminate this Agreement under Section 6(a), then the Business Associate 1, at the request of Covered Entity or on its own accord, must notify Business Associate 2 of the pattern of activity or practice. Business Associate 2 must then take reasonable steps to cure such breach or end such violation, as applicable. If the Business Associate 2's efforts to cure such breach or end such violation are unsuccessful, Business Associate 1, at the request of the Covered Entity or on its own accord, may either (i) terminate this Agreement, if feasible or (ii) report Business Associate 2's breach or violation to the Secretary.

c. Effect of Termination. After termination of this Agreement for any reason, the Business Associate, with respect to PHI it received from the Covered Entity, or created, maintained, or received by Business Associate 2 on behalf of the Covered Entity, must:

- (1) retain only that PHI which is necessary for Business Associate 2 to continue its proper management and administration or to carry out its legal responsibilities;
- (2) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the remaining PHI that Business Associate 2 still maintains in any form;
- (3) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate 2 retains the PHI;
- (4) not use or disclose the PHI retained by Business Associate 2 other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3(a)(1) which applied before termination; and
- (5) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the PHI retained by Business Associate 2 when it is no longer needed by Business Associate 2 for its proper management and administration or to carry out its legal responsibilities.

7. No Waiver of Immunity. The parties do not intend to waive any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law.

8. Data Ownership. Business Associate 2 has no ownership rights in the PHI. The covered entity retains all ownership rights of the PHI; provided, however, Business Associate 2 may retain the PHI as required by law as long as Business Associate 2 maintains security of the PHI during the course of retention.

9. Disclaimer. Neither Business Associate 1, nor the Covered Entity, warrants or represents that compliance by Business Associate 2 with this Agreement, HIPAA, or the HIPAA Rules will be adequate or satisfactory for Business Associate 2's own purposes. Business Associate 2 is solely responsible for all decisions made by Business Associate 2 regarding the safeguarding of PHI.

10. Certification. If the Covered Entity determines an examination is necessary to comply with the Covered Entity's legal obligations under HIPAA relating to certification of its security practices, the Covered Entity or its authorized agents or contractors, may, at the Covered Entity's expense, examine Business Associate 2's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to the Covered Entity the extent to which Business Associate 2's security safeguards comply with HIPAA, the HIPAA Rules or this Agreement.

11. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and the HIPAA Rules. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA and the HIPAA Rules. Either party may terminate the Agreement upon thirty days written notice if (i) one party does not promptly enter into negotiations to amend this Agreement when requested by the other party or (ii) Business Associate 2 does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that the Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA or the HIPAA Rules.

12. Assistance in Litigation or Administrative Proceedings. Business Associate 2 must make itself, and any subcontractors, employees or agents assisting Business Associate 2 in the performance of its obligations under this Agreement, available to the Covered Entity or Business Associate 1, at no cost to the Covered Entity or Business Associate 1, to testify as witnesses, or otherwise, if litigation or administrative proceedings are commenced against the Covered Entity or Business Associate 1, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA or the HIPAA Rules or other laws relating to Business Associate 2's or its subcontractors use or disclosure of PHI under this Agreement, except where Business Associate 2 or its subcontractor, employee or agent is a named adverse party.

13. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer upon any person other than the Covered Entity, Business Associate 1, Business Associate 2 and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

14. Interpretation and Order of Precedence. Any ambiguity in this Agreement must be interpreted to permit compliance with the HIPAA Rules. Where the provisions of this Agreement differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement control.

15. Effective Date. This Agreement is effective upon receipt of the last approval necessary and the affixing of the last signature required.

16. Survival of Certain Agreement Terms. Notwithstanding any contrary provision in this Agreement, the Business Associate 2's obligations under Section 6(d) and record retention laws ("Effect of Termination") and Section 12 ("No Third-Party Beneficiaries") survive termination of this Agreement and are enforceable by the Covered Entity or Business Associate 1.

17. Representatives and Notice.

a. Representatives. The individuals listed below are designated as the parties' respective representatives for purposes of this Agreement. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices must be in writing and must be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative

James Bowen
Privacy and Security Manager
MDHHS Compliance Office
333 South Grand Ave, 4th Floor
Lansing, MI 48933
(517) 284-1018
MDHHSPrivacySecurity@michigan.gov

Business Associate 1 Representative:

Name: Sarah Walter
Title: Category Analyst
Department: DTMB – Central Procurement
Address: 525 West Allegan
Phone: 517-256-4237
Email: WalterS6@michigan.gov

Business Associate 2 Representative:

Name: Robert Rossi, Esq.
Title: Privacy Officer
Department: Compliance Department
Address: 481 Edward H. Ross, Elmwood Park, New Jersey 07407
Phone: 800-229-5227
Email: rossi@bioreference.com

Any notice given to a party under this Agreement shall be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third Business Day after being sent by certified or registered mail.

**DTMB as Business Associate 1, on behalf of
Michigan Department of Health and Human
Services**

Business Associate 2

BIOREFERENCE LABORATORIES, INC.

By: _____

By: _____

Date: _____

Date: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

SCHEDULE E

FEDERAL PROVISIONS ADDENDUM

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in 41 CFR Part 60-1.3, and except as otherwise may be provided under 41 CFR Part 60, then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The 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 race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in

whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in **Executive Order 11246** of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in **Executive Order 11246** of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of **Executive Order 11246** of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or **contract** modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contracts** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, contractors are required to pay wages not less than once a week.

3. Copeland "Anti-Kickback" Act

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- (1) Contractor. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the

same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A “contract award” (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (51 FR 6370; February 21, 1986) and 12689 (54 FR 34131; August 18, 1989), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The contractor or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The contractor or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under 2 CFR 200.322, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

(1) Access to Records. The following access to records requirements apply to this contract:

- a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

(3) DHS Seal, Logo, And Flags

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(4) Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(5) No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

(6) Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Exhibit 1 - Byrd Anti-Lobbying Certification

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official
