

**SURVEILLANCE TESTING SERVICES AGREEMENT
(Government Entity)**

THIS SURVEILLANCE TESTING SERVICES AGREEMENT (“Agreement”), effective on the _____ day of _____, 20____ (“Effective Date”), is by and between Wichita State University, a Kansas public institution (“Lab”) and _____ (“Government”), referred individually as “party” and collectively as “parties.”

WHEREAS, Lab is a clinical laboratory certified under the Clinical Laboratory Improvement Act (“CLIA”) that provides laboratory services;

WHEREAS, Government desires to engage Lab to provide certain services as enumerated herein to persons in Government’s community (“Community Members”)

WHEREAS, as part of Government’s strategic preparedness and response plan to COVID-19, which includes securing the availability of COVID-19 testing capacity for government and private sector initiatives as designated by Government (those agencies, entities or other organizations undertaking initiatives to which Government is allocating a portion of its Processing Capacity shall hereafter be referred to as a “Designee “or “Designees”); and

WHEREAS, Lab desires to provide such Services, all upon the terms, conditions, and mutual promises hereinafter contained.

NOW, THEREFORE, in consideration of the premises above and the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term. The term of this Agreement shall be one (1) year commencing on the Effective Date unless terminated earlier as provided herein (“Term”). This Agreement will automatically renew for successive one (1) year terms unless either party provides a written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then-current Term.

2. Lab Services. Lab shall provide processing of specimens coordinated by Government or Designees for SARS CoV-2 (“Services”) for Community Members. Lab is not responsible for obtaining the specimens (the “Specimens”) from Community Members. Lab shall process _____ specimens per week for the first _____ weeks, and gradually increase specimen processing to approximately _____ specimens per week (“Processing Capacity”). Government must coordinate the use of Processing Capacity among it and Designees and may request Lab to perform in excess of the Processing Capacity provided that Government provide advance written notice to Lab of the requested increase in Processing Capacity to allow Lab to determine the feasibility of such request. Within _____ days of Government’s request to increase Processing Capacity, Lab shall inform Government whether it can accommodate such request and the timeframe for implementation of the requested Processing Capacity. In connection with the Services and subject to availability, Lab shall provide Government and Designees specimen collection supplies (“Supplies”) to enable the Government or Designees to obtain Specimens from Community Members. Lab reserves the right to charge Government for these Supplies. Government is responsible for ensuring that appropriately qualified, trained and supervised staff are utilized by Government and Designees for the accurate collection of Specimens using the Supplies provided by Lab. Government shall follow, and shall ensure that all Designees follow, the Protocols provided by Lab. The organization collecting the specimen (the “Collecting Organization”), the Community Member and the ordering provider, as applicable, from whom the specimen was collected will have access to a secure website to view and/or print the test results when the test results are available.

3. Specimen Drop-off. Government shall ensure that Government and Designees drops off all Specimens at the Lab in accordance with the policies, protocols, and procedures (the “Protocols”) provided by the Lab and as published on the Website. Lab will only accept Specimens collected using the Supplies provided by Lab. Government and Designees may avail themselves of any of the drop-off methods listed on the Website. Lab will notify the Collecting Organization of any specimens dropped off at the Lab that are deemed not suitable for processing. Government shall assume all risk of loss for the transportation of the Specimens to the Lab and shall be responsible for all costs unless otherwise stated.

4. Results; Reporting. The organization collecting the Specimen (the “Collecting Organization”), the Community Member from whom the Specimen was collected, and the ordering provider, as applicable, will have access to a secure website to view and/or print the test results when the test results are available (the “Results”). Lab shall use reasonable efforts to report the Results to the Community Member and the ordering provider in a timely manner. Results will not be reported to any third-party. If required by applicable law, Lab shall be responsible for reporting to applicable federal or state health authorities regarding SARS CoV-2 test results. Government shall ensure that the Collecting Organization provides Lab with all necessary Community Member demographic information to enable Lab to meet such reporting obligations.

5. Government Responsibilities. Government will be responsible for the following, and shall ensure that each Designee strictly adheres to the following:

- a. obtaining and utilizing only Supplies provided by Lab for the collection of any Specimen;
- b. providing all necessary information for any Specimen dropped off at the Lab, including the individual’s name, date of birth, telephone number, email address and county of residence and such other demographic information as may be necessary to enable Lab to meet applicable reporting obligations;
- c. notifying Lab at least twenty-four (24) hours in advance of any anticipated delivery of over 500 specimens collectively from Designees ;
- d. ensuring that all laboratory tests for Community Members are ordered by appropriately authorized healthcare providers and that a copy of the order is provided to Lab (Lab will accept a standing order for Community Members from an authorized healthcare provider);
- e. where applicable, ensuring that appropriately qualified, trained and supervised staff perform the collection of Specimens using the Supplies provided by Lab and that such Specimens are collected in accordance with the Protocols established by Lab;
- f. confirming that all Community Members properly register through the Lab portal and that all handwritten information on any Specimen is legibly written in English;
- g. packaging Specimens in accordance with specifications provided by Lab;
- h. timely, same day submission of specimens to the Lab in accordance with the protocols provided by Lab;
- i. informing all Community Members that the Lab does not assume any responsibility for and/or provide any medical care or treatment to the Community Members and

that Community Members are encouraged to follow up with their primary care provider to discuss the Results and seek individualized medical care; and

- j. complying with all Lab Protocols.

Government acknowledges that valid Results are dependent upon proper Specimen collection and handling before arrival of the Specimen at the Lab. Specimen collection will vary depending on test type. Instructions for properly collecting the Specimen are included in the Supplies provided by Lab.

6. Qualifications/Compliance with Laws/Regulations, Rules/Standards. At all times during the Term, Lab shall comply with all applicable laws, rules and regulations of the United States, the State of Kansas, and any other applicable states or governmental agencies (the “Applicable Laws”) in the performance of Services hereunder. Lab also agrees to evaluate existing and forthcoming Centers for Diseases Control and Prevention guidelines, as they become available, and incorporate them into the Protocols as deemed appropriate by Lab.

7. Compensation.

- a. In consideration for the Services, Government shall compensate Lab the amount set forth on the Website. Fees are subject to change and may be updated without notice to Government from time to time as circumstances require. Government shall remit payment to Lab within thirty (30) days of the date of a Lab invoice for Services rendered hereunder. Should payment not be received within those thirty (30) days, Lab reserves the right to assess a one and one-half percent (1.5%) service charge on any outstanding balance. If payment is not received in full within sixty (60) days of the date of the invoice Lab may, at its option, charge an additional two percent (2%) service charge on any outstanding balance. Provider shall be responsible for all collection or legal fees necessitated by lateness or default in payment.
- b. The parties acknowledge that the compensation payable hereunder is intended to compensate Lab for the services provided by Lab to Government and is not dependent upon the volume or value of any referral of patients by Government to Lab. Nothing herein shall be intended or implied to require the referral of any patient to Lab.
- c. In the event that either party, or a Designee, desires to submit claims to a third-party payor, including but not limited to government payors such as Medicare or Medicaid, the parties will determine the appropriate billing arrangement to ensure that no payor is double billed and that all applicable billing rules are followed. Lab makes no representations or warranties as to whether the Services are reimbursable by a third-party payor. Government submits claims for the Services to third-party payers at its own risk. To the extent Government wishes to submit claims for Services to third-party payers, Government is solely responsible for determining whether the Services are reimbursable and in compliance with such third-party payer’s rules and regulations, and policies and procedures.
- d. The parties acknowledge that the price paid by Government may reflect a discounted pricing arrangement that has been negotiated in an arms-length transaction between the Lab and Government. Lab shall fully and accurately report discounted pricing, if applicable, on the invoice, coupon or other statement submitted to Government. Government may request additional information from Lab to meet its reporting or disclosure obligations and Lab shall provide such requested information to Government

within a reasonable time of such request. Government acknowledges that it may be required by law to disclose the actual cost (after taking into account discounts, rebates or any other price reductions) of any items purchased, leased or otherwise obtained and, on request, provide to the U.S. Department of Health & Human Services and other federal agencies, any invoices, coupons, statements, and other documentation reflecting such cost.

8. Cooperation in the Event of a Claim.

- a. In the event that Government or Lab becomes aware of any alleged injury arising out of or relating to laboratory services provided under this Agreement, each party has a duty to give the other party written notice within fifteen (15) days containing the particulars sufficient to identify the name and address of the allegedly injured person, place and circumstances of the alleged incident, and the names and addresses of the available witnesses.
- b. Lab shall be entitled to receive notice of any lawsuit filed or written demand of a claim against Government related to the performance of services provided under this Agreement, within ten (10) days of receipt by Government of notice of such claim or lawsuit.
- c. Each of the parties shall cooperate with each other in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to any of the parties because of injury with respect to which insurance is afforded, and shall attend the hearings and trials and assist in securing evidence and obtaining the attendance of witnesses as is reasonably necessary.
- d. In the event any party is entitled to indemnity pursuant to Section 9, the party entitled to indemnity shall, to the extent allowed by law, tender all defense responsibilities to the indemnifying party and its insurer(s), provided, however, the indemnifying party shall cause the party to be indemnified to be informed of the progress of any claim or litigation and the defense thereof and provided, further, that in the event such claim or action being defended by the indemnifying party or its insurer seeks monetary damages from the party to be indemnified which are not covered by or are in excess of the limits of the indemnifying party's professional liability insurance coverage, the party to be indemnified shall have the right at any time at its election (i) to assume its own defense at its own cost in which case the obligation to indemnify will be cancelled; or (ii) to participate in the defense of such claim in an advisory, non-decision making capacity in which case the obligation to indemnify will remain. Nothing herein shall be construed, however, as requiring the indemnifying party to defend, indemnify, or hold the party to be indemnified harmless from its own negligence or that of its employees.

9. Indemnification. To the extent allowed by law, each party (each respectively an "Indemnitor") shall indemnify, defend and hold harmless the other party and the other party's respective affiliates, officers, directors, employees, contractors, and agents from and against any and all claims, suits, actions, proceedings, liabilities, damages, costs or expenses, including attorney fees and court costs (each a "Claim") to the extent arising from (a) the breach of any warranty, representation or covenant in this Agreement and (b) the negligent acts or omissions or intentional misconduct by the Indemnitor or its officers, directors, employees, contractors, representatives or agents. The provisions of this section shall survive termination of this Agreement. Notwithstanding the foregoing, no provision of this Agreement will be given effect that attempts to require either party to defend, hold harmless, or indemnify the other party or any third party for any acts or omissions. The liability of both parties is defined under the Kansas Tort Claims Act (K.S.A. § 75-6101 et seq.).

10. Termination.

- a. For Cause. This Agreement may be terminated by either party at any time in the event of a breach of or noncompliance with any covenant, term or condition of this Agreement after the non-breaching party has provided written notice of such breach or noncompliance and the same remains uncured for fifteen (15) business days subsequent to the giving of such notice.
- b. For Convenience. Either party may terminate this Agreement without cause upon thirty (30) days' prior written notice to the other party. Further, this Agreement may be terminated immediately by Lab if one or more emergency use authorizations that authorize any testing services contemplated by this Agreement are terminated or expire, or upon a declaration by a U.S. federal governmental authority of the end of the circumstances justifying the authorization of emergency use of the Services.
- c. Effect of Termination. Termination of this Agreement shall not release Government from its respective obligations to pay Lab for any Services performed prior to the effective date of termination.

11. Public Readiness and Emergency Preparedness Act. Notwithstanding anything to the contrary herein, Lab and Government each agree as follows:

- a. The parties hereto are authorized to engage in the activities set forth herein and to demonstrate compliance with the Public Readiness and Emergency Preparedness Act, 42 U.S.C. § 247d-6d ("PREP Act"), and its accompanying March 17, 2020, Declaration ("Declaration"), 85 Fed Reg 15198.
- b. The parties reasonably believe that they qualify as covered persons" using "covered countermeasures" to perform "recommended activities" under the PREP Act and are administering and using the "covered countermeasures" with respect to the population and geographic area identified in the Declaration.
- c. Government represents that it is a state or local public health and medical response agency or its delegate that has legal responsibility and authority for responding to the COVID-19 emergency.
- d. Government hereby authorizes Lab and their respective employees, contractors and others making use of their facilities to engage in the activities set forth herein. The parties agree that such authorization is provided by Government only to the extent such authorization is required by the PREP Act and solely for the purpose of compliance with the PREP Act and Declaration.

12. Confidential Information. All terms set forth in the Agreement and information or data relating to the business or operations of any party to this Agreement acquired by any other party hereto in connection with this Agreement shall be treated as strictly confidential by the receiving party, and shall not, unless otherwise required by law, be disclosed by the receiving party without the prior written permission of the party hereto to whom the information in question relates. This provision shall survive termination of the Agreement.

13. Privacy and Security Compliance. The parties agree to maintain the privacy and security of any individually identifiable information received from or created for the other party in accordance with all

relevant state and federal laws and regulations. This provision shall survive termination of this Agreement. Government shall ensure that all Designees comply with the requirements set forth in this Section 13.

14. Applicable Law. The parties agree that the validity, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Kansas. Jurisdiction and venue of any suit in connection with this Agreement shall reside solely in the courts located in Sedgwick County, Kansas.

15. Independent Contractor. Lab's Services hereunder are to be rendered in the capacity of an independent contractor of Government. Neither party has authority to enter into contracts or assume any obligations for or on behalf of the other party or to make any warranties or representations for or on behalf of the other party.

16. Assignment. Neither party may assign its rights nor subcontract any of its obligations hereunder to a third party without the other party's advance written consent.

17. Notices. All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either Party to the other shall be **IN WRITING** and sent by certified mail or overnight traceable delivery (return receipt requested and postage prepaid), or electronically to the following at the addresses set forth below. Either party may change its notice or contact person by providing written notice to the other party.

If to Wichita State University:

Attn: Molecular Diagnostic Laboratory
Wichita State University
1845 Fairmount Street
Wichita, Kansas 67260
[INSERT EMAIL ADDRESS]

If to GOVERNMENT:

Attn: _____

[INCLUDE EMAIL ADDRESS]

With a copy to:

Attn: General Counsel
Wichita State University
1845 Fairmount Street
Wichita, KS 67260-0205
general.counsel@wichita.edu

With a copy to (optional):

[INCLUDE EMAIL ADDRESS]

18. Entire Agreement; Amendment. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, understandings and agreements. No amendment of this Agreement will have any force or effect unless such amendment specifically indicates it is a modification of this Agreement, is in writing and signed by authorized representatives of both parties.

19. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining portion of the provision and all other provisions shall not be affected or impaired.

20. Waiver. Any waiver shall be in writing and provided to all other Parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any Party hereto.

21. Arbitration, Damages, Warranties. Notwithstanding any language to the contrary, no interpretation of this contract shall find that Lab has agreed to binding arbitration, or the payment of damages or penalties. Further, Lab does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to Lab at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. A copy, electronic version or facsimile of any such document shall be as effective as an original.
23. Electronic Signatures. The parties agree that this Agreement may be signed with electronic signatures. Whenever either party executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature and shall be legally binding equivalent. The parties agree that neither party will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.
24. No Third Party Beneficiaries. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto, and that the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.
25. Headings. The section headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.
26. Designee Paperwork. Government shall ensure that each Designee complete and execute any and all forms required by Lab to be completed. Lab must receive a copy of the fully completed and executed forms prior to processing specimens from a Designee.
27. Force Majeure. Lab shall not be liable to Government for any failure or delay caused by events beyond Lab's reasonable control, including, without limitation, a failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, technical failures, epidemics, or pandemics (including, but not limited to COVID-19 (in each case, a "Force Majeure Event"), provided Lab notifies Government as soon as possible of any Force Majeure Event and uses its reasonable best efforts to mitigate and remedy the adverse effects of such a Force Majeure Event. In the event said Force Majeure Event persists for longer than thirty (30) days, either party shall have the option to terminate this Agreement in accordance with Section 10.b, without penalty.
28. No Warranty. Government recognizes the Results cannot be guaranteed even through use of Lab's reasonable efforts. In no event will either party be liable to the other party for any indirect, incidental, consequential, punitive, special or exemplary damages (even if such party has been advised of the possibility of such damages) arising from this Agreement. Lab does not make any warranties regarding the Services or Results, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Government acknowledges that, like all diagnostic testing, the Services carry inherent limitations, such as inaccuracy and time limitations. For example, for a variety of reasons, such testing may produce false positive result, false negative results, or specimens may be insufficient to produce a result.

29. Publicity. Neither party shall use the name, logos, insignias, or trademarks (the “Logos”) of the other party (or its affiliates) in any manner whatsoever except as set forth in this Agreement or as authorized by each party in writing in each instance. Permission for use of Lab’s Logos may only be granted by the Wichita State University Office of Strategic Communications. The parties may use the name of the party and its employees for fulfilling any reporting obligations.

30. Website. The Lab may modify, update, change, and/or add to the information contained on the Website at any time and for any reason, in its sole discretion, without notice to Government, including but not limited to changes to types of Services offered, costs of Services, processing time, etc. Such changes will be effective upon posting of such updates on the Website. Government is responsible for periodically visiting the Website to review any changes.

31. Continuing Care. The parties agree that in carrying out the Services described in this Agreement, the Lab does not assume any responsibility for continuing medical care and/or treatment of the Community Members whose tests and Results may be handled by the Lab in performance of this Agreement.

[Intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the Effective Date.

Wichita State University:

Government:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____