



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

## State of West Virginia Master Agreement

Order Date: 11-14-2022

CORRECT ORDER NUMBER MUST  
 APPEAR ON ALL PACKAGES, INVOICES,  
 AND SHIPPING PAPERS. QUESTIONS  
 CONCERNING THIS ORDER SHOULD BE  
 DIRECTED TO THE DEPARTMENT  
 CONTACT.

<b>Order Number:</b>	CMA 0506 0506 HHR2300000002 1	<b>Procurement Folder:</b>	1110505
<b>Document Name:</b>	DRUG AND ALCOHOL TESTING	<b>Reason for Modification:</b>	
<b>Document Description:</b>	DRUG AND ALCOHOL TESTING		
<b>Procurement Type:</b>	Central Master Agreement		
<b>Buyer Name:</b>			
<b>Telephone:</b>			
<b>Email:</b>			
<b>Shipping Method:</b>	Best Way	<b>Effective Start Date:</b>	2022-12-01
<b>Free on Board:</b>	FOB Dest, Freight Prepaid	<b>Effective End Date:</b>	2023-11-30

VENDOR	DEPARTMENT CONTACT																				
<b>Vendor Customer Code:</b> VS0000011071 LNK LLC 100 LEE ST W  CHARLESTON WV 25302-2342 US <b>Vendor Contact Phone:</b> 304-344-8378 <b>Extension:</b>  <b>Discount Details:</b> <table border="1" style="width: 100%;"> <thead> <tr> <th></th> <th>Discount Allowed</th> <th>Discount Percentage</th> <th>Discount Days</th> </tr> </thead> <tbody> <tr> <td>#1</td> <td>No</td> <td>0.0000</td> <td>0</td> </tr> <tr> <td>#2</td> <td>No</td> <td></td> <td></td> </tr> <tr> <td>#3</td> <td>No</td> <td></td> <td></td> </tr> <tr> <td>#4</td> <td>No</td> <td></td> <td></td> </tr> </tbody> </table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			<b>Requestor Name:</b> Virginia L Fitzwater <b>Requestor Phone:</b> (304) 558-5625 <b>Requestor Email:</b> ginny.l.fitzwater@wv.gov  <div style="text-align: center; font-size: 2em; font-weight: bold;">23</div> <b>FILE LOCATION</b> _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
BUYER - 304-957-0209 HEALTH AND HUMAN RESOURCES OFFICE OF HUMAN RESOURCES MGMT ONE DAVIS SQUARE, STE 400 CHARLESTON WV 25301 US	BUYER - 304-957-0209 HEALTH AND HUMAN RESOURCES OFFICE OF HUMAN RESOURCES MGMT ONE DAVIS SQUARE, STE 400 CHARLESTON WV 25301 US

11-21-22 BAN

<b>Total Order Amount:</b>	Open End
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Purchasing Division's File Copy

ENTERED

CH 11/14/22

<b>PURCHASING DIVISION AUTHORIZATION</b>  <b>DATE:</b> <i>11/18/2022</i> <b>ELECTRONIC SIGNATURE ON FILE</b>
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<b>ATTORNEY GENERAL APPROVAL AS TO FORM</b> <i>John S. Gray</i> <b>DATE:</b> <i>11/22/2022</i> <b>ELECTRONIC SIGNATURE ON FILE</b>
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<b>ENCUMBRANCE CERTIFICATION</b> <i>[Signature]</i> <b>DATE:</b> <i>11/22/2022</i> <b>ELECTRONIC SIGNATURE ON FILE</b>
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**Extended Description:**

THE VENDOR, LNK LLC, DBA DRUG TESTING CENTERS OF AMERICA, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, INTO AN OPEN-END CONTRACT FOR DRUG AND ALCOHOL TESTING SERVICES FOR SELECT PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST-ACCIDENT, AND RETURN-TO-DUTY/FOLLOW-UP PER THE TERMS AND CONDITIONS, SPECIFICATIONS, BID REQUIREMENTS, ADDENDUM ISSUED 10/12/2022, AND THE VENDOR'S BID DATED 10/23/2022, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	85121810			TEST	150.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Pre-Employment Drug Testing - Laboratory Screen

**Extended Description:**

Pre-Employment Drug Testing - Laboratory Screening - Section 1.1 A

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	85121810			TEST	60.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Pre-Employment Alcohol Testing

**Extended Description:**

Pre-Employment Alcohol Testing Section 1.1 B

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	85121810			TEST	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Reasonable Suspicion Drug Testing - On-Site Screen

**Extended Description:**

Reasonable Suspicion Drug Testing - On-Site Screen - Section 1.2 A

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	85121810			TEST	200.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Reasonable Suspicion Drug Testing - Laboratory Screen

**Extended Description:**

Reasonable Suspicion Drug Testing -Laboratory Screen - Section 1.2 B

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	85121810			TEST	70.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Reasonable Suspicion Alcohol Testing

**Extended Description:**

Reasonable Suspicion Alcohol Testing - Section 1.2 C

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	85121810			TEST	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Post-Accident Drug Testing - On-Site Screen

**Extended Description:**

Post-Accident Drug Testing - On-Site Screen Section 1.3.A

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	85121810			TEST	200.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Post-Accident Drug Testing - Laboratory Screen

**Extended Description:**

Post-Accident Drug Testing - Laboratory Screen Section 1.3 B

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	85121810			TEST	70.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Post-Accident Alcohol Testing

**Extended Description:**

Post-Accident Alcohol Testing  
Section 1.3 C

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
9	85121810			TEST	150.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Return to Work Drug Testing -Laboratory Screen

**Extended Description:**

Return to Work Drug Testing - Laboratory Screen Section 1.4 A

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
10	85121810			TEST	60.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Return to Work Alcohol Testing

**Extended Description:**

Return to Work Alcohol Testing  
Section 1.4 B

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
11	85121810			HOUR	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Collection Expert Testimony

**Extended Description:**

Collection Expert Testimony  
Section 4.1.1.17.1

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
12	85121810			HOUR	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Laboratory Expert Testimony

**Extended Description:**  
 Laboratory Expert Testimony  
 Section 4.1.1.17.2

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
13	85121810			HOUR	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** MRO Expert Testimony

**Extended Description:**  
 MRO Expert Testimony  
 Section 4.1.1.17.3

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
14	85121810			HOUR	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Collection Expert Testimony at Deposition

**Extended Description:**  
 Collection Expert Testimony at Deposition Section 4.1.1.17.4

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
15	85121810			HOUR	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Laboratory Expert Testimony at Deposition

**Extended Description:**  
 Laboratory Expert Testimony at Deposition - Section 4.1.1.17.5

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
16	85121810			HOUR	50.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** MRO Expert Testimony at Deposition

**Extended Description:**  
 MRO Expert Testimony at Deposition Section 4.1.1.17.6

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
17	85121810			TEST	0.000000
	<b>Service From</b>	<b>Service To</b>			

**Commodity Line Description:** Blind Performance Tests (One per Quarter)

**Extended Description:**  
 Blind Performance Tests (One per Quarter) Section 4.1.2.8

## GENERAL TERMS AND CONDITIONS:

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

**Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of one (1) year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

**Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

**Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

the contract will continue for \_\_\_\_\_ years;

the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

**One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

**Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

**Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

**Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

**Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

**Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

**One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**Construction:** This Contract is for construction activity more fully defined in the specifications.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

SAMHSA LABORATORY CERTIFICATION

CERTIFIED MEDICAL REVIEW OFFICER

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancellation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.



Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

**Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$1,000,000.00 per occurrence. Notwithstanding the foregoing, Vendor's are not required to list the State as an additional insured for this type of policy.

**Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Builders Risk Insurance** in an amount equal to 100% of the amount of the

Contract.  **Pollution Insurance** in an amount of: \_\_\_\_\_ per

occurrence.

**Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. VENUE:** All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

\_\_\_\_\_ for \_\_\_\_\_.

Liquidated Damages Contained in the Specifications.

Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

Revised 09/12/2022

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES:** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.



**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) Julia Barker, VP of Operations

(Address) 100 Lee Street W

(Phone Number) / (Fax Number) 304-344-8378 / 304-344-0069

(email address) julia.barker@drugtestingcenters.com

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

*By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.*

LNK LLC dba Drug Testing Centers of America

(Company)



(Signature of Authorized Representative)

Julia A. Barker, VP of Operations, 10/20/22

(Printed Name and Title of Authorized Representative) (Date)

304-344-8378 / 304-344-0069

(Phone Number) (Fax Number)

julia.barker@drugtestingcenters.com

(Email Address)

## Drug and Alcohol Testing Services

### SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the Department of Health and Human Resources (“DHHR,” “Department” or “Agency”) to establish an open-end contract for drug and alcohol testing services for select pre-employment, reasonable suspicion/cause, post-accident, and return-to-duty/follow-up, as needed and requested by its agencies, available 24-hours-per-day/7-days-per-week.

The contract awarded as a result of this solicitation may be funded in whole or in part with federal funds and thus this solicitation and its resulting awarded contract are subject to the requirements of Attachment 1: Provisions Required for Federally Funded Procurements.

*NOTE: The WVDHHR has developed an EEOP Utilization Report and it is available at: <http://www.wvdhhr.org/pdfs/H1.5%20Utilization%20Report%20and%20EEO%20policy.pdf>*

These services will be made available to the Department and its agencies to include:

- \* Office of Health Facilities (OHF) and its seven State owned and operated medical facilities.
- \* Bureau for Behavioral Health (BBH)
- \* Bureau for Child Support Enforcement (BCSE)
- \* Bureau for Family Assistance (BFA)
- \* Bureau for Medical Services (BMS)
- \* Bureau for Public Health (BPH)
- \* Office of the Cabinet Secretary
- \* Bureau for Social Services (BSS)

Vendor will provide the Contract Services specified herein for the DHHR workforce of over 6,000 employees, as well as new-hire testing for OHF & BBH’s workforce of approximately 1,700 employees (included within the total for DHHR).

DHHR anticipates usage at the indicated locations in the estimates provided below:

#### 1.1 Pre-Employment

#### Estimated Number of Yearly Tests

##### 1. Office of Health Facilities & 7 State-Owned Medical Facilities

	A. Drug/Laboratory	B. Alcohol Facility
Hopemont Hospital Hopemont, West Virginia 26764	40	40
Lakin Hospital Lakin, West Virginia 25287	100	100

## Drug and Alcohol Testing Services

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John Manchin Senior Health Care Hospital Fairmont, West Virginia 26554	50	50
Jackie Withrow Hospital Beckley, West Virginia 25801	120	120
Mildred Mitchell-Bateman Hospital Huntington, West Virginia 25709	180	180
William R. Sharpe, Jr. Hospital Weston, West Virginia 26452	175	175
Welch Community Hospital Welch, West Virginia 24901	100	100

### 1.2 Reasonable Suspicion/Cause

### Estimated Number of Yearly Tests

Location	A. Drug	B. Laboratory	C. Alcohol
<b>1. Bureau for Behavioral Health</b>	15	15	15
Central Office Charleston, WV 25301			
Any Facility Listed Above			
<b>2. Bureau for Child Support Enforcement</b>	15	15	15
Central Office Charleston, WV 25301			
Morgantown, WV 26501			
Sutton, WV 26601			
White Hall, WV 26554			
Any County Office Listed Below			
<b>3. Bureau for Children and Families</b>	15	15	15
Central Office Charleston, WV 25301			

## Drug and Alcohol Testing Services

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Any County Office Listed Below

<b>4. Bureau for Medical Services</b>	15	15	15
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Central Office  
Charleston, WV 25301

<b>5. Bureau for Public Health</b>	15	15	15
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Central Office  
Charleston, WV 25301

Medical Examiner's Office  
Charleston, WV 25302

State Labs  
South Charleston, WV 25303

Threat Prep  
Charleston, WV 25301

Any County Office Listed Below

<b>6. Offices of the Cabinet Secretary</b>	15	15	15
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Central Office  
Charleston, WV 25301

OIG  
Capitol Complex  
Charleston, WV 25315

OIG  
408 Leon Sullivan Way  
Charleston, WV 25301

Any County Office Listed Below.

## Drug and Alcohol Testing Services

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### DHHR County Offices

Beckley, WV 25801 Berkeley Springs, WV 25411 Buckhannon, WV 26201 Charles Town, WV 25414 Charleston, WV 25313 Clarksburg, WV 26302 Clay, WV 25043 Elizabeth, WV 26143 Elkins, WV 26241 Foster, WV 25081 Franklin, WV 26807 Glenville, WV 26351 Grafton, WV 26354 Grantsville, WV 26147 Hamlin, WV 25523 Harrisville, WV 26362 Hinton, WV 25951 Huntington, WV 35704 Keyser, WV 26762 Kingwood, WV 26537 Lewisburg, WV 24901 Logan, WV 25601 Marlinton, WV 24954 Martinsburg, WV 25404 Middlebourne, WV 26149 Moorefield, WV 26836 Morgantown, WV 26507	Moundsville, WV 26041 New Martinsville, WV 26155 Oak Hill, WV 25901 Parkersburg, WV 26102 Parsons, WV 26287 Petersburg, WV 26847 Phillipi, WV 26416 Pineville, WV 24874 Princeton, WV 27439 Pt. Pleasant, WV 25550 Ripley, WV 25271 Romney, WV 26757 Smithburg, WV 26436 Spencer, WV 25276 St. Marys, WV 26170 Summersville, WV 26651 Sutton, WV 26601 Union, WV 24983 Wayne, WV 25570 Webster Springs, WV 26288 Weirton, WV 26062 Welch, WV 24801 Weston, WV 26452 Wheeling, WV 26003 White Hall, WV 26554 Williamson, WV 25661 Winfield, WV 25213
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### 1.3 Post-Accident/Incident

	A.	B.	C.
Anywhere in the state.	2	2	2

### 1.4 Return to Work

	A.	B.
Anywhere in the state.	25	25

## Drug and Alcohol Testing Services

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### 1.5 Other Locations as Needed

In addition to the specific locations indicated above, the Vendor must be able to respond for testing anywhere in the state, including, but not limited to, DHHR offices not located within a county office, and post-accident locations. These additional locations do not affect the estimated numbers above.

**2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

**2.1 “Contract Services”** means the drug and alcohol testing services identified on the Pricing Pages as more fully described in these specifications.

**2.2 “Medical Review Officer (MRO)”** means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

**2.3 “Pricing Page”** means the pages, contained in wvOASIS or attached hereto as Exhibit A, upon which Vendor should list its proposed price for the Contract Services.

**2.4 “SAMHSA”** means the Substance Abuse and Mental Health Services Administration, an agency of the United States Department of Health and Human Services.

**2.5 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.6 “Testing Locations”** means the locations where on-site testing/collections will be performed as listed above.

**2.7 “Title 49 CFR Part 40”** means the United States Department of Transportation Workplace Drug and Alcohol Testing Program Policy available at: [http://www.dot.gov/odapc/NEW\\_DOCS/part40.html](http://www.dot.gov/odapc/NEW_DOCS/part40.html).

**3. QUALIFICATIONS:** Vendor, or Vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications:

**3.1.** Prior to the award, Vendor must provide proof that it is a qualified drug and alcohol testing vendor as required by Title 49 CFR Part 40, with a minimum of five (5) years’ business experience in drug and alcohol testing.

**3.2.** If any portions of the program will be subcontracted, vendor should identify in the bid those subcontractors that it intends to use and the portions of the

## **Drug and Alcohol Testing Services**

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program to be assigned to each. If no subcontractors will be used, that should be stated in the bid. Subcontracting is permissible with written approval of the agency, DHHR and the Vendor. This includes any testing laboratories that will be used, and an attestation that the laboratory meets all the requirements set forth in Section 4 below. Proof of subcontracting work and attestation should be submitted at time of bid but will be required prior to award.

- 4. MANDATORY REQUIREMENTS:** Contract Services must meet or exceed the mandatory requirements listed below.

### **4.1 Vendor Mandatory Contract Services Requirements and Deliverables:**

#### **4.1.1 General Requirements**

- 4.1.1.1** Vendor must provide scheduled service Monday through Friday, between 7:00 am and 5:00 pm.
- 4.1.1.2** Vendor must provide 24-hour un-scheduled specimen collection for reasonable suspicion/for cause testing on an as-needed basis.
- 4.1.1.3** Vendor must arrive on location and be ready to conduct reasonable suspicion/for cause testing within two (2) hours of the request for testing. This includes testing at DHHR offices/facilities, and/or other locations as needed.
- 4.1.1.4** Vendor must provide for an account manager (or designee) to be available 24 hours a day, 7 days a week to answer questions and resolve problems.
- 4.1.1.5** Vendor must supply an emergency telephone number to be used by each testing location to provide specimen collection services after regular office hours.
- 4.1.1.6** Vendor must ensure that strict rules of confidentiality are maintained at all times. All test results and material acquired shall become the property of DHHR and the State of West Virginia. Information must not be released to any other party without prior express written consent of DHHR.

## **Drug and Alcohol Testing Services**

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- 4.1.1.7** Vendor must maintain records related to the performance of work under this agreement in accordance with 49 CFR Part 40 and accepted professional practice and appropriate accounting procedures.
- 4.1.1.8** Vendor shall maintain records pertaining to the contract for five (5) years following the end of the contract period.
- 4.1.1.9** Vendor must provide copies of any and all records held in performance of this agreement within 10 days of written notice by DHHR's Director of the Office of Human Resources Management, or his/her designee.
- 4.1.1.10** Vendor must provide computer software or a secured internet-based result reporting system at no cost to DHHR for tracking, management, and record maintenance of the DHHR program. The software or internet-based result reporting utilized must contain all necessary components to permit the MRO's report to be submitted and contained in the database. Vendor must provide DHHR with inquiry access to the software or internet-based result reporting from a DHHR personal computer located in the Office of Human Resources Management, or other designated location.
  - 4.1.1.10.1** Vendor may be required to demonstrate in person at no cost to DHHR all functions relative to program tracking, management, and record maintenance in the Office of Human Resources Management. DHHR reserves the right to determine acceptability based on the security of transmission along with the limit of access to any transmission, storage, or retrieval systems and to approve or reject software or internet-based result reporting.
  - 4.1.1.10.2** At the time of bid, Vendor should identify the software or internet-based result reporting system proposed for use under this contract. Such system must be secure and provide for the protection of confidential information (including, but not limited to, personally identifiable information (PII), any information protected by HIPAA, and all other such



## **Drug and Alcohol Testing Services**

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information protected by applicable state and federal laws). If it should be discovered that the software or reporting system lacks these protections, DHHR reserves the right to (1) demand that the Vendor immediately utilize another system, or (2) immediately terminate the contract. Vendor will be required to identify software or internet-based result reporting system proposed prior to award.

- 4.1.1.11** When submitting invoices for payment, Vendor must provide a detailed written summary of the testing program activity that accompanies and supports each invoice.
- 4.1.1.12** Vendor must follow the US Department of Transportation collection protocols provided in 49 CFR Part 40 with respect to conducting workplace drug and alcohol testing, for collecting and storing urine specimens, testing for drugs and alcohol, and ensuring confidentiality.
- 4.1.1.13** Vendor must collect specimens on DHHR premises, unless other arrangements are made with DHHR, and Vendor must provide for all conditions of privacy, confidentiality and chain of custody.
- 4.1.1.14** Vendor must comply with all applicable laws, regulations and industry standards relating to drug and alcohol testing.
- 4.1.1.15** Vendor must ensure that collection site personnel will be trained in compliance with Title 49 CFR Part 40 and shall be regularly engaged in the business of providing the required drug and alcohol testing.
- 4.1.1.16** Vendor must provide all forms, collection kits and miscellaneous supplies for the collection, transportation and analyses of specimens.
- 4.1.1.17** Vendor must provide, upon request, expert witness testimony regarding the results and accuracy of specific employee testing should the results and subsequent actions be challenged by the employee.

## **Drug and Alcohol Testing Services**

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- 4.1.1.17.1** Expert witness testimony includes a collection expert to testify in court to the procedures followed in collecting the employee's specimen(s).
- 4.1.1.17.2** Expert witness testimony includes a laboratory expert to testify in court to the procedures followed in testing the employee's specimen(s).
- 4.1.1.17.3** Expert witness testimony includes MRO expert to testify in court to the test results of the employee's specimen(s).
- 4.1.1.17.4** Expert testimony includes that provided by a collection expert at deposition.
- 4.1.1.17.5** Expert testimony includes that provided by a laboratory expert at deposition.
- 4.1.1.17.6** Expert testimony includes that provided by a MRO at deposition.
- 4.1.1.17.7** Expert testimony includes a litigation package of pertinent documents, including, but not limited to: chain of custody forms, reports, quality control, and any documents generated during the testing process.
- 4.1.1.17.8** Cost of expert testimony is to be bid at an hourly rate, whereas all specimen collection and testing is to be bid at a flat rate (i.e., cost per test). Expert testimony will only be used when needed and should not be included in the bid price for every test.
- 4.1.1.17.9** Expert testimony can usually be taken by telephone and should not require travel on the part of the individual providing this service.

### **4.1.2 Testing Requirements**

- 4.1.2.1** Vendor must provide for alcohol testing on-site using equipment approved by the US Department Transportation and found on its

## **Drug and Alcohol Testing Services**

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Conforming Products List available at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-14/pdf/2012-14582.pdf> using the collection protocols found in 49 CFR Part 40.

- 4.1.2.2** Vendor must provide for a confirmatory alcohol test on all breath concentrations minimum of .01 or higher.
- 4.1.2.3** Vendor must provide for collection of urine on-site in compliance with Title 49 CFR Part 40.
- 4.1.2.4** Upon request, Vendor must be able to provide preliminary drug test results on-site. Vendor must provide separate pricing for preliminary testing on-site versus testing in the lab. The Department will determine whether it will use preliminary testing, in-lab testing or both, based upon need.
- 4.1.2.5** The split sample method of collection, handling, and storage is to be utilized.
- 4.1.2.6** Vendor must utilize a SAMHSA-certified laboratory. The laboratory shall test and store specimens (primary and split specimens) and have in place equipment that meets applicable regulations. Additionally, the laboratory shall have a quality control program in place that complies with 49 CFR Part 40. Vendor must provide proof of SAMHSA certification.
- 4.1.2.7** Vendor must provide for transportation for all specimens to the appropriate testing laboratory in accordance with 49 CFR Part 40.
- 4.1.2.8** On a quarterly basis, Vendor must submit blind performance test specimens to the laboratory. Vendor will submit a false specimen to the laboratory for quality control purposes. These specimens must have a false identifier and be indistinguishable from all other regular specimens. The results will be delivered and billed to the DHHR's Office of Human Resources Management.
- 4.1.2.9** Vendor must perform chemical analyses of specimens to determine whether the person from whom the specimen was taken has been using any of the following drugs:

## Drug and Alcohol Testing Services

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- A. Amphetamines
- B. Cannabinoids (THC)
- C. Cocaine
- D. Opiates
- E. Phencyclidines (PCP)
- F. Barbiturates
- G. Benzodiazepines
- H. Methadone
- I. Propoxyphene
- J. Methaqualone

**4.1.2.10** Vendor must provide a confirmatory test on all positive drug screens using gas chromatography/mass spectrometry technology, or other acceptable method that meets industry standard.

**4.1.2.11** Vendor must provide, as part of its services, a Certified Medical Review Officer (MRO), certified in accordance with 49 CFR Part 40. Vendor must provide proof of MRO certification.

**4.1.2.12** Vendor must provide confirmed test results to DHHR's Director of the Office of Human Resources Management or his/her designee via confidential means, immediately upon confirmation by the MRO, but not later than 4:00 p.m. on the third business day following the date of a test. If not reported timely, DHHR will not be charged for the test. Vendor may not reschedule a test for the purposes of meeting this requirement. For the purposes of this requirement, business days are Monday through Friday.

**4.1.2.13** Vendor must report results as "Negative," "Positive," "Abnormal," or "Safety Concern."

**4.1.2.13.1** An "abnormal" result is used when the results of chemical analysis indicate that the properties of the sample are inconsistent with normal human values or that the sample is otherwise invalid.

**4.1.2.13.2** A "safety concern" result is used when the employee has a valid prescription for the medication, but the levels present indicate it is not being taken as

## Drug and Alcohol Testing Services

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prescribed or the effects of the medication may pose a safety risk due to the nature of the employee's work.

**4.1.2.14** If a DHHR employee or prospective employee wishes to challenge a positive test result, such re-testing must be conducted from the same specimen that was originally taken, and the cost of which shall be borne by the employee or prospective employee. DHHR will not be responsible for the cost of these re-tests. Additionally, arrangements for re-testing and payment are to be made by the Vendor and the employee or prospective employee.

### **4.2 DHHR Mandatory Contract Services Requirements and Deliverables:**

- 4.2.1** Upon contract award, DHHR's Director of the Office of Human Resources Management will provide a comprehensive list of individuals from each Facility / Bureau / Office authorized to request testing and receive results.
- 4.2.2** DHHR will not reimburse the Vendor for initial set-up fee or for any renewal fees if the contract is renewed.
- 4.2.3** DHHR will not compensate Vendor separately for specimen adulteration assays. Testing for adulterants must be included with the overall price per test.
- 4.2.4** DHHR will not compensate Vendor for improper collection, storage, labeling, testing, etc., which results in inaccurate or incomplete test results.
- 4.2.5** DHHR will not compensate Vendor on an hourly rate, except for the cost of expert testimony. See Section 5.2 below. All other prices quoted, and invoices submitted for payment must be based upon a flat rate.
- 4.2.6** DHHR will not compensate Vendor for no-shows and refusals to test that are not the fault of DHHR.

## **5. CONTRACT AWARD:**

**5.1 Contract Award:** The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

## Drug and Alcohol Testing Services

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**5.2 Pricing Page:** Vendor should complete the Pricing Page by entering the Unit Price for each item/Commodity Line as follows:

Cost of expert testimony is to be bid at an hourly rate, whereas all specimen collection and testing is to be bid at a flat rate (i.e., cost per test). Expert testimony will only be used when needed, and should not be included in the bid price for every test.

**Line 1 through Line 10 Costs** are to be based upon an all-inclusive, per-test rate, including travel time; culminating with the certification of results and proper reporting of such results to appropriate DHHR personnel.

Line 1: Pre-Employment Drug Testing – Laboratory Screen (1.1A)

Line 2: Pre-Employment Alcohol Testing (1.1B)

Line 3: Reasonable Suspicion Drug Testing – Preliminary On-Site Screen (1.2A)

Line 4: Reasonable Suspicion Drug Testing – Laboratory Screen (1.2B)

Line 5: Reasonable Suspicion Alcohol Testing (1.2C)

Line 6: Post Accident Drug Testing – Preliminary On-Site Screen (1.3A)

Line 7: Post Accident Drug Testing – Laboratory Screen (1.3B)

Line 8: Post Accident Alcohol Testing (1.3C)

Line 9: Return to Work Drug Testing – Laboratory Screen (1.4A)

Line 10: Return to Work Drug Alcohol Testing (1.4B)

**Line 11 through Line 16** All costs are to be based upon an all-inclusive hourly rate including travel and preparation time.

Line 11: Collection Expert Witness Testimony (4.1.1.17.1)

Line 12: Laboratory Expert Witness Testimony (4.1.1.17.2)

Line 13: MRO Expert Witness Testimony (4.1.1.17.3)

Line 14: Collection Expert Witness Testimony at Deposition (4.1.1.17.4)

Line 15: Laboratory Expert Witness Testimony at Deposition (4.1.1.17.5)

Line 16: MRO Expert Witness Testimony at Deposition (4.1.1.17.6)

## **Drug and Alcohol Testing Services**

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**Line 17.** Blind performance tests are to be based upon the same all-inclusive, per-test rate as Lines 1 through 10, above.

Line 17: Blind Performance Tests (One Per Quarter) (4.1.2.8)

If responding with a paper bid, vendors should use the assembled CRFQ form (of the latest version), provided either with a mailed or faxed copy of the solicitation, or by downloading/printing from the Vendor Self Service (VSS) portal of wvOASIS, and insert the Unit Prices as instructed above. Then, they should multiply the Unit Price for each line by the provided Quantity (Qty) to calculate and enter a Total Price for each line. Vendors should not enter Total Prices without corresponding Unit Prices. Vendors should add all Total Price lines to arrive at their Total Bid.

If responding electronically through VSS, the Total Price is calculated by the system automatically; vendors should only need to enter a Unit Price for each line.

If issues arise in using wvOASIS to access the Pricing Page or other documentation, or with entering bid data electronically in general, bidders should contact the wvOASIS Helpdesk at (304) 558-6708.

**6. PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.

**7. PAYMENT:** Agency shall pay per test or other unit, as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

Vendor shall submit monthly invoices, in arrears, to each Bureau/Office according to usage for all services provided pursuant to the terms of the contract. Each invoice will contain sufficient documentation to determine the dates, types of tests, and costs per test and/or hours of expert testimony as applicable. DHHR reserves the right to reject any invoices for which proper documentation has not been provided. The Agency will attempt to notify Vendor within ten (10) working days from the date of receipt of any deficient invoices.

**8. TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be

## **Drug and Alcohol Testing Services**

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included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

**9. FACILITIES ACCESS:** Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:

- 9.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
- 9.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
- 9.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
- 9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
- 9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

### **10. VENDOR DEFAULT:**

**10.1.** The following shall be considered a vendor default under this Contract.

- 10.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.
- 10.1.2. Failure to comply with other specifications and requirements contained herein.
- 10.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.



## **Drug and Alcohol Testing Services**

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### **10.1.4. Failure to remedy deficient performance upon request.**

### **10.2. The following remedies shall be available to Agency upon default.**

#### **10.2.1. Immediate cancellation of the Contract.**

#### **10.2.2. Immediate cancellation of one or more release orders issued under this Contract.**

#### **10.2.3. Liquidated Damages:**

Vendor recognizes that their promise to timely and accurately perform specimen collection and testing is of the essence of this drug and alcohol testing contract with DHHR. Vendor also recognizes that DHHR provides vital services to the residents of the State, and as such, DHHR has a legitimate expectation that the Vendor will timely and accurately perform under this contract. Accordingly, Vendor agrees to pay to DHHR as liquidated damages an amount equal to what they would have billed DHHR, per incident, for failure to materially perform as required under this contract. If Vendor fails to pay properly-assessed liquidated damages to DHHR, then DHHR reserves the right to withhold the amount of said liquidated damages from future payments to Vendor.

#### **10.2.4. Any other remedies available in law or equity.**

## **11. MISCELLANEOUS:**

**11.1. Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

**Contract Manager:** Julia Barker  
**Telephone Number:** 304-344-8378

**Drug and Alcohol Testing Services**

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**Fax Number:** 304-344-0069

**Email Address:** julia.barker@drugtestingcenters.com

**WV STATE GOVERNMENT**

**HIPAA BUSINESS ASSOCIATE ADDENDUM**

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
  - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
  - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
  - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
  - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111<sup>th</sup> Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

## **2. Permitted Uses and Disclosures.**

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

### 3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will 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, except as provided for in this Addendum. This shall include, but not be limited to:
  - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
  - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
  - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
  - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

- f. **Support of Individual Rights.**
- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
  - ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
  - iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
    - the date of disclosure;
    - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
    - a brief description of the PHI disclosed; and
    - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
  - iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
  - v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- i. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at [www.state.wv.us/admin/purchase/vrc/agencyli.htm](http://www.state.wv.us/admin/purchase/vrc/agencyli.htm) and,

unless otherwise directed by the Agency in writing, the Office of Technology at [incident@wv.gov](mailto:incident@wv.gov) or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance In Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

#### 4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents



and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

#### **5. General Provisions/Ownership of PHI.**

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: DHHR Purchasing

Signature: Kimberly S Jobe

Title: Procurement Specialist, Senior

Date: 11/15/22

Name of Associate: LNK LLC dba Drug Testing Centers of America  
Julia A. Barker

Signature: Julia A. Barker

Title: VP of Operations

Date: 11/14/22

Form - WVBA-012004  
Amended 08.28.2013

APPROVED AS TO FORM THIS 26<sup>th</sup>  
DAY OF Nov 20 17  
Patrick Morrisey  
Attorney General  
BY [Signature]

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Associate: LNK dba Drug Testing Centers of America

Name of Agency: WV DHHR

Describe the PHI (do not include any actual PHI). If not applicable, please indicate the same.

**FEDERAL FUNDS ADDENDUM**

**2 C.F.R. §§ 200.317 – 200.327**

**Purpose:** This addendum is intended to modify the solicitation in an attempt to make the contract compliant with the requirements of 2 C.F.R. §§ 200.317 through 200.327 relating to the expenditure of certain federal funds. This solicitation will allow the State to obtain one or more contracts that satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

**Instructions:** Vendors who are willing to extend their contract to procurements with federal funds and the requirements that go along with doing so, should sign the attached document identified as: “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)”

Should the awarded vendor be unwilling to extend the contract to federal funds procurement, the State reserves the right to award additional contracts to vendors that can and are willing to meet federal funds procurement requirements.

**Changes to Specifications:** Vendors should consider this solicitation as containing two separate solicitations, one for state level procurement and one for county/local procurement.

**State Level:** In the first solicitation, bid responses will be evaluated with applicable preferences identified in sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” to establish a contract for both standard state procurements and state federal funds procurements.

**County Level:** In the second solicitation, bid responses will be evaluated with applicable preferences identified in Sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” omitted to establish a contract for County/Local federal funds procurement.

**Award:** If the two evaluations result in the same vendor being identified as the winning bidder, the two solicitations will be combined into a single contract award. If the evaluations result in a different bidder being identified as the winning bidder, multiple contracts may be awarded. The State reserves the right to award to multiple different entities should it be required to satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

**State Government Use Caution:** State agencies planning to utilize this contract for procurements subject to the above identified federal regulations should first consult with the federal agency providing the applicable funding to ensure the contract is compliant.

**County/Local Government Use Caution:** County and Local government entities planning to utilize this contract for procurements subject to the above identified federal regulation should first consult with the federal agency providing the applicable funding to ensure the contract is compliant. For purposes of County/Local government use, the solicitation resulting in this contract was conducted in accordance with the procurement laws, rules, and procedures governing the West Virginia Department of Administration, Purchasing Division, except that vendor preference has been omitted for County/Local use purposes and the contract terms contained in the document entitled “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)” have been added.

## FEDERAL FUNDS ADDENDUM

### **REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

The State of West Virginia Department of Administration, Purchasing Division, and the Vendor awarded this Contract intend that this Contract be compliant with the requirements of the Procurement Standards contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 C.F.R. § 200.317, et seq. for procurements conducted by a Non-Federal Entity. Accordingly, the Parties agree that the following provisions are included in the Contract.

**1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:  
(2 C.F.R. § 200.321)**

- a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

- b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**2. DOMESTIC PREFERENCES:  
(2 C.F.R. § 200.322)**

- a. The State confirms that as appropriate and to the extent consistent with law, it has, to the greatest extent practicable under a Federal award, provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United

States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

- b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.
- c. Definitions: For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**3. BREACH OF CONTRACT REMEDIES AND PENALTIES:**  
(2 C.F.R. § 200.327 and Appendix II)

- (a) The provisions of West Virginia Code of State Rules § 148-1-5 provide for breach of contract remedies, and penalties. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

**4. TERMINATION FOR CAUSE AND CONVENIENCE:**  
(2 C.F.R. § 200.327 and Appendix II)

- (a) The provisions of West Virginia Code of State Rules § 148-1-5 govern Contract termination. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

**5. EQUAL EMPLOYMENT OPPORTUNITY:**  
(2 C.F.R. § 200.327 and Appendix II)

Except as otherwise provided under 41 CFR Part 60, and if this contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, this contract includes the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**6. DAVIS-BACON WAGE RATES:**  
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this Contract includes construction, all construction work in excess of \$2,000 will be completed and paid for in compliance with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must:

- (a) 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.
- (b) pay wages not less than once a week.

A copy of the current prevailing wage determination issued by the Department of Labor is attached hereto as Exhibit B. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The State will report all suspected or reported violations to the Federal awarding agency.

**7. ANTI-KICKBACK ACT:**  
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that it will comply with the Copeland Anti-KickBack Act (40 U.S.C. 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”). Accordingly, Vendor, Subcontractors, and anyone performing under this contract are prohibited 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. The State must report all suspected or reported violations to the Federal awarding agency.

**8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**  
(2 C.F.R. § 200.327 and Appendix II)

Where applicable, and only for contracts awarded by the State in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.**  
(2 C.F.R. § 200.327 and Appendix II)

If the Federal award meets the definition of "funding agreement" 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 the requirements of 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.

**10. CLEAN AIR ACT**  
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this contract exceeds \$150,000, Vendor is to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**11. DEBARMENT AND SUSPENSION**  
(2 C.F.R. § 200.327 and Appendix II)

The State will not award to any vendor that is listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "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.

**12. BYRD ANTI-LOBBYING AMENDMENT**  
(2 C.F.R. § 200.327 and Appendix II)

Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must 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 non-Federal award.

**13. PROCUREMENT OF RECOVERED MATERIALS**  
(2 C.F.R. § 200.327 and Appendix II; 2 C.F.R. § 200.323)

Vendor agrees that it and the State must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the



Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**  
(2 C.F.R. § 200.327 and Appendix II; 2 CFR § 200.216)

Vendor and State agree that both are prohibited from obligating or expending funds under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

State of West Virginia

Vendor Name:

By: Kimberly S. Sobe

By: LNK LLC dba Drug Testing Centers of America

Printed Name: Kimberly S. Sobe

Printed Name: Julia A. Barker, ~~Julia A. Barker~~

Title: Procurement Specialist, Senior

Title: VP of Operations

Date: 11/14/22

Date: October 20, 2022

**EXHIBIT A To:  
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY  
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

**W. Va. CSR § 148-1-5**

West Virginia Code of State Rules  
Title 148. Department of Administration  
Legislative Rule (Ser. 1)  
Series 1. Purchasing

W. Va. Code St. R. § 148-1-5  
§ 148-1-5. Remedies.

Currentness

5.1. The Director may require that the spending unit attempt to resolve any issues that it may have with the vendor prior to pursuing a remedy contained herein. The spending unit must document any resolution efforts and provide copies of those documents to the Purchasing Division.

5.2. Contract Cancellation.

5.2.1. Cancellation. The Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

5.2.1.a. The vendor agrees to the cancellation;

5.2.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

5.2.1.c. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.1.d. The existence of an organizational conflict of interest is identified;

5.2.1.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;

5.2.1.f. Violation of any federal, state, or local law, regulation, or ordinance, and

5.2.1.g. The contract was awarded in error.

5.2.2. The Director may cancel a purchase or contract for any reason or no reason, upon providing the vendor with 30 days' notice of the cancellation.

5.2.3. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Director may request that the vendor remedy the contract breach or legal violation within a time frame the Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

5.2.4. Re-Award. The Director may award the cancelled contract to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) without a subsequent solicitation if the following conditions are met:

5.2.4.a. The next lowest responsible bidder (or next highest scoring bidder if best value procurement) is able to perform at the price contained in its original bid submission, and

5.2.4.b. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

Award to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) will not be an option if the vendor's failure has in any way increased or significantly changed the scope of the original contract. The vendor failing to honor contractual and legal obligations is responsible for any increase in cost the state incurs as a result of the re-award.

5.3. Non-Responsible. If the Director believes that a vendor may be non-responsible, the Director may request that a vendor or spending unit provide evidence that the vendor either does or does not have the capability to fully perform the contract requirements, and the integrity and reliability necessary to assure good faith performance. If the Director determines that the vendor is non-responsible, the Director shall reject that vendor's bid and shall not award the contract to that vendor. A determination of non-responsibility must be evaluated on a case-by-case basis and can only be made after the vendor in question has submitted a bid. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

5.4. Suspension.

**5.4.1. The Director may suspend, for a period not to exceed 1 year, the right of a vendor to bid on procurements issued by the Purchasing Division or any state spending unit under its authority if:**

**5.4.1.a. The vendor has submitted a bid and then requested that its bid be withdrawn after bids have been publicly opened.**

**5.4.1.b. The vendor has exhibited poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; or failure to deliver commodities, services, or printing at the quality level required by the contract.**

**5.4.1.c. The vendor has breached a contract issued by the Purchasing Division or any state spending unit under its authority and refuses to remedy that breach.**

**5.4.1.d. The vendor's actions have given rise to one or more of the grounds for debarment listed in W. Va. Code § 5A-3-33d.**

**5.4.2. Vendor suspension for the reasons listed in section 5.4 above shall occur as follows:**

**5.4.2.a. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.**

**5.4.2.b. A notice of suspension must inform the vendor:**

**5.4.2.b.1. Of the grounds for the suspension;**

**5.4.2.b.2. Of the duration of the suspension;**

**5.4.2.b.3. Of the right to request a hearing contesting the suspension;**

**5.4.2.b.4. That a request for a hearing must be served on the Director no later than 5 working days of the vendor's receipt of the notice of suspension;**

5.4.2.b.5. That the vendor's failure to request a hearing no later than 5 working days of the receipt of the notice of suspension will be deemed a waiver of the right to a hearing and result in the automatic enforcement of the suspension without further notice or an opportunity to respond; and

5.4.2.b.6. That a request for a hearing must include an explanation of why the vendor believes the Director's asserted grounds for suspension do not apply and why the vendor should not be suspended.

5.4.2.c. A vendor's failure to serve a request for hearing on the Director no later than 5 working days of the vendor's receipt of the notice of suspension will be deemed a waiver of the right to a hearing and may result in the automatic enforcement of the suspension without further notice or an opportunity to respond.

5.4.2.d. A vendor who files a timely request for hearing but nevertheless fails to provide an explanation of why the asserted grounds for suspension are inapplicable or should not result in a suspension, may result in a denial of the vendor's hearing request.

5.4.2.e. Within 5 working days of receiving the vendor's request for a hearing, the Director will serve on the vendor a notice of hearing that includes the date, time and place of the hearing.

5.4.2.f. The hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the hearing, the Director will issue and serve on the vendor, a written decision either confirming or reversing the suspension.

5.4.3. A vendor may appeal a decision of the Director to the Secretary of the Department of Administration. The appeal must be in writing and served on the Secretary no later than 5 working days of receipt of the Director's decision.

5.4.4. The Secretary, or his or her designee, will schedule an appeal hearing and serve on the vendor, a notice of hearing that includes the date, time and place of the hearing. The appeal hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the appeal hearing, the Secretary will issue and serve on the vendor a written decision either confirming or reversing the suspension.

5.4.5. Any notice or service related to suspension actions or proceedings must be provided by certified mail, return receipt requested.

5.5. Vendor Debarment. The Director may debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code § 5A-3-33d or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation.

5.5.1. Debarment proceedings shall be conducted in accordance with W. Va. Code § 5A-3-33e and these rules. A vendor that has received notice of the proposed debarment by certified mail, return receipt requested, must respond to the proposed debarment within 30 working days after receipt of notice or the debarment will be instituted without further notice. A vendor is deemed to have received notice, notwithstanding the vendor's failure to accept the certified mail, if the letter is addressed to the vendor at its last known address. After considering the matter and reaching a decision, the Director shall notify the vendor of his or her decision by certified mail, return receipt requested.

5.5.2. Any vendor, other than a vendor prohibited from participating in federal procurement, undergoing debarment proceedings is permitted to continue participating in the state's procurement process until a final debarment decision has been reached. Any contract that a debarred vendor obtains prior to a final debarment decision shall remain in effect for the current term, but may not be extended or renewed. Notwithstanding the foregoing, the Director may cancel a contract held by a debarred vendor if the Director determines, in his or her sole discretion, that doing so is in the best interest of the State. A vendor prohibited from participating in federal procurement will not be permitted to participate in the state's procurement process during debarment proceedings.

5.5.3. If the Director's final debarment decision is that debarment is warranted and notice of the final debarment decision is mailed, the Purchasing Division shall reject any bid submitted by the debarred vendor, including any bid submitted prior to the final debarment decision if that bid has not yet been accepted and a contract consummated.

5.5.4. Pursuant to W.Va. Code § 5A-3-33e(e), the length of the debarment period will be specified in the debarment decision and will be for a period of time that the Director finds necessary and proper to protect the public from an irresponsible vendor.

5.5.5. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

5.5.6. Related Party Debarment. The Director may pursue debarment of a related party at the



same time that debarment of the original vendor is proceeding or at any time thereafter that the Director determines a related party debarment is warranted. Any entity that fails to provide the Director with full, complete, and accurate information requested by the Director to determine related party status will be presumed to be a related party subject to debarment.

#### **5.6. Damages.**

5.6.1. A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

5.6.2. If any commodities delivered under a contract have been used or consumed by a spending unit and on testing the commodities are found not to comply with specifications, no payment may be approved by the Spending Unit for the merchandise until the amount of actual damages incurred has been determined.

5.6.3. The Spending Unit shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

#### **Credits**

History: Filed 4-1-19, eff. 4-1-19; Filed 4-16-21, eff. 5-1-21.

Current through register dated May 7, 2021. Some sections may be more current. See credits for details.

W. Va. C.S.R. § 148-1-5, WV ADC § 148-1-5

**End of Document**

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**EXHIBIT B To:  
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY  
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

**Prevailing Wage Determination**

– Not Applicable Because Contract Not for Construction

– Federal Prevailing Wage Determination on Next Page

**Exhibit A  
Pricing Page**


Any anticipated travel may be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor.

Vendor must include the cost of a certified Medical Review Officer (MRO) in the per test cost.

The vendor's quotation must include bids for the following information as outlined:

<b>Service</b>	<b>Unit of Measure</b>	<b>Unit Price</b>
1.1 A Pre-Employment Drug Testing - Laboratory Screen	Test	\$150.00
1.1 B Pre-Employment Alcohol Testing	Test	\$60.00
1.2 A Reasonable Suspicion Drug Testing - Preliminary On-Site Screen	Test	\$50.00
1.2 B Reasonable Suspicion Drug Testing - Laboratory Screen	Test	\$200.00
1.2 C Reasonable Suspicion Alcohol Testing	Test	\$70.00
1.3 A Post-Accident Drug Testing - Preliminary On-Site Screen	Test	\$50.00
1.3 B Post-Accident Drug Testing - Laboratory Screen	Test	\$200.00
1.3 C Post-Accident Alcohol Testing	Test	\$70.00
1.4 A Return to Work Drug Testing - Laboratory Screen	Test	\$150.00
1.4 B Return to Work Alcohol Testing	Test	\$60.00
4.1.1.17.1 Collection Expert Testimony	Hour	\$50.00
4.1.1.17.2 Laboratory Expert Testimony	Hour	\$50.00
4.1.1.17.3 MRO Expert Testimony	Hour	\$60.00
4.1.1.17.4 Collection Expert Testimony at Deposition	Hour	\$50.00
4.1.1.17.5 Laboratory Expert Testimony at Deposition	Hour	\$50.00
4.1.1.17.6 MRO Expert Testimony at Deposition	Hour	\$50.00
4.1.2.8 Blind Performance Tests (One Per Quarter)	Test	\$0.00

**CONTACT INFORMATION**

<b><u>Vendor Name:</u></b>	<u>LNK LLC dba Drug Testing Centers of America</u>
<b><u>Vendor Address:</u></b>	<u>100 Lee Street W</u> <u>Charleston, WV 25302</u>
<b><u>Vendor Contact Name:</u></b>	<u>Julia A. Barker</u>
<b><u>Vendor Phone Number:</u></b>	<u>304-344-8378</u>
<b><u>Vendor Fax Number:</u></b>	<u>304-344-0069</u>
<b><u>Vendor Email Address:</u></b>	<u>julia.barker@drugtestingcenters.com</u>
<b><u>24-Hr Phone Number for Callback Services:</u></b>	<u>304-344-8378, 606-793-3309, 606-792-5693</u>
<b><u>Signature of Authorized Vendor Agent:</u></b>	<u></u>
<b><u>Date</u></b>	<u>October 23, 2022</u>



STATE OF WEST VIRGINIA  
**DEPARTMENT OF ADMINISTRATION**  
OFFICE OF TECHNOLOGY  
State Capitol  
Charleston, West Virginia 25305

Mark D. Scott  
Cabinet Secretary

Joshua D. Spence  
Chief Information Officer

**M E M O R A N D U M**

**TO: Ron Courtney, Procurement Associate**  
**Department of Health and Human Resources**

**FROM: Joshua D. Spence, Chief Information Officer**  
**Office of Technology**

**SUBJECT: INFORMATION TECHNOLOGY PROCUREMENT**  
**HR003507 IS&C NUMBER: 2022-7127**

**DATE: October 7, 2022**

West Virginia Code §5A-6-4(a)(3) permits the Chief Technology Officer to "evaluate the economic justification, system design and suitability of information equipment and related services, and review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services by the state spending units."

West Virginia Code §5A-6-4c requires that the Chief Technology Officer review and approve "a major information technology project."

West Virginia Code §5A-6-5 requires that "any state spending unit that pursues an information technology purchase that does not meet the definition of a 'major technology project' and that is required to submit a request for proposal to the State Purchasing Division prior to purchasing goods or services shall obtain the approval of the Chief Technology Officer, in writing, of any proposed purchase of goods or services related to its information technology and telecommunication systems."

After conducting a review of your request for drug and alcohol testing services, the Office of Technology has determined:

**X** That your request is approved.

That your request is not subject to the review and approval provisions contained in Chapter 5A, Article 6 of the Code, therefore, it does not need approval by the Office of Technology.

This memorandum constitutes this office's official review and a copy should be attached to your purchase order and any other correspondence related to this request.

If you have questions, or need additional information, please contact Consulting Services at [Consulting.Services@wv.gov](mailto:Consulting.Services@wv.gov).