



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: 08-09-2024

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

Order Number:	CMA 0803 0083 DOT2500000005 1	Procurement Folder:	1451340
Document Name:	DRUG AND ALCOHOL TESTING 8324C0076	Reason for Modification:	
Document Description:	DRUG AND ALCOHOL TESTING 8324C0076		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2024-08-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-08-14

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VS0000014758 QUALITY DRUG TESTING INC 8 AIRPORT RD  CHAPMANVILLE WV 25508-9698 US Vendor Contact Phone: 304-855-0058 Extension:  Discount Details: <table><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>0</td></tr><tr><td>#3</td><td>No</td><td></td><td>0</td></tr><tr><td>#4</td><td>No</td><td></td><td>0</td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No		0	#3	No		0	#4	No		0	Requestor Name: Kandy McKinney Requestor Phone: (304) 558-3111 Requestor Email: kandy.mckinney@wv.gov  <b>2025</b> FILE LOCATION
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No		0																		
#3	No		0																		
#4	No		0																		

INVOICE TO	SHIP TO
DIVISION OF HIGHWAYS HUMAN RESOURCES DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM A317 CHARLESTON WV 25305 US	DIVISION OF HIGHWAYS HUMAN RESOURCES DIVISION 1900 KANAWHA BLVD E, BLDG 5 RM A317 CHARLESTON WV 25305 US

9/9/24 GC  
JE 8/14/24  
Purchasing Division's File Copy  
Total Order Amount: Open End

PURCHASING DIVISION AUTHORIZATION DATE: 9.6.24 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: John L. Gray ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: 9.6.24 ELECTRONIC SIGNATURE ON FILE
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**Extended Description:**

The Vendor, Quality Drug Testing Inc., agrees to enter with the West Virginia Department of Transportation (WVDOT), West Virginia Division of Highways (WVDOT), into an open-end contract to provide Drug and Alcohol Testing per the Specifications, Terms and Conditions, Bid Requirements, Addendum\_1 dated 07/08/2024, Addendum\_2 dated 07/08/2024, Addendum\_3 dated 07/22/2024 and the Vendor's bid dated 07/31/2024, incorporated herein by reference and made apart hereof.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	85121810			EA	36.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: On-Site Urine Collection

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	85121810			EA	36.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: On-Site Urine Collection - After Hours

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	85121810			EA	12.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: On-Site Alcohol (Breath) Test

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	85121810			EA	15.000000
	Service From	Service To	Service Contract Amount		
			0.00		

Commodity Line Description: On-Site Alcohol (Breath) Test - After Hours

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	85121810			DAY	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Collector Testimony

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	85121810			DAY	0.000000
	Service From	Service To	Service Contract Amount		
			0.00		

Commodity Line Description: Deposition

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	85121810			DAY	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Expert Witness Testimony

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	85121810			EA	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Laboratory Litigation Packages

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
9	85121810			EA	36.000000
	Service From	Service To	Service Contract Amount		
			0.00		

Commodity Line Description: Scheduled Clinic Visit - Urine Collections

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
10	85121810			EA	15.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Scheduled Clinic Visit - Alcohol (Breath) Test

**Extended Description:**

DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
11	85121810			EA	36.000000
Service From		Service To		Service Contract Amount	
				0.00	

**Commodity Line Description:** Reasonable Suspicion Test-Urine Collection-Business Hours

**Extended Description:**  
 DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
12	85121810			EA	36.000000
Service From		Service To		Service Contract Amount	
				0.00	

**Commodity Line Description:** Reasonable Suspicion Test-Urine Collection-After Hours

**Extended Description:**  
 DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
13	85121810			EA	15.000000
Service From		Service To		Service Contract Amount	
				0.00	

**Commodity Line Description:** Reasonable Suspicion Test-Alcohol Breath Test-Business Hours

**Extended Description:**  
 DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
14	85121810			EA	15.000000
Service From		Service To		Service Contract Amount	
				0.00	

**Commodity Line Description:** Reasonable Suspicion Test-Alcohol Breath Test-After Hours

**Extended Description:**  
 DRUG AND ALCOHOL TESTING SERVICES, INCLUDING BUT NOT LIMITED TO, RANDOM, PRE-EMPLOYMENT, REASONABLE SUSPICION/CAUSE, POST ACCIDENT/INCIDENT, RETURN TO DUTY/FOLLOW UP AND ANY OTHER DRUG AND OR ALCOHOL TESTING SERVICE DEEMED NECESSARY BY WVDOT

## **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 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 (3) three 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 of 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.

☐☐☐☐

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 cancelation, 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: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, 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.

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**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:

☒ \$100.00 per incident \_\_\_\_\_ for failure to comply with scheduling requirements.

☐ 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 [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy).

**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.

**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 hearth, 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) Jennifer Ellis - President

(Address) 8 Airport Road Chapmanville WV 25508

(Phone Number) / (Fax Number) 304-784-7406 or 304-855-0058

(email address) testing@qualitydrug.co

**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.

Quality Drug Testing  
(Company)

(Signature of Authorized Representative)

Jennifer Ellis - President

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

304-784-7406 or 304-855-0058

(Phone Number) (Fax Number)

testing@qualitydrug.co

(Email Address)

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**SPECIFICATIONS**

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Transportation (WVDOT) to establish an open-end contract for drug and alcohol testing services involving WVDOT agency employees, and individuals proposed to become WVDOT agency employees, in all 55 counties of the State of West Virginia. These services will include generating random selections, preparing requested reports, coordinating urine and/or breath collections, performing work-site collections, and storing/shipping of samples.
- 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 “After Hours”** means all times during the weekdays outside of business hours, all State Holidays, and all Saturdays and Sundays.
  - 2.2 “Agency”** means the West Virginia Department of Transportation, as established by W.Va. Code §5F-1-2, and includes collectively or individually the Division of Highways (DOH), the Parkways Authority, and the State Rail Authority (SRA).
  - 2.3 “Business Hours”** means the time from 6:30 am to 5:00 pm on the days of Monday through Friday.
  - 2.4 “Contract Item” or “Contract Items”** means the list of items identified in Section III, Subsection 1 below.
  - 2.5 “HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, enacted to protect sensitive patient health information from disclosure without a patient’s consent or knowledge.
  - 2.6 “Medical Review Officer (MRO)”** 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.
  - 2.7 “Pricing Pages”** means the schedule of prices, estimated order quantity, and totals attached hereto as Exhibit A and used to evaluate the RFQ.
  - 2.8 “Request for Quotation” or “RFQ”** means the official request for quotation recognized and published by the Purchasing Division.

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- 2.9 "SAMHSA"** means the United States Department of Health & Human Services, Substance Abuse and Mental Health Services Administration
- 2.10 "Split Sample"** means the donor's sample is split into two vials, such that each part is representative of the original sample, so that an additional test of the donor's sample may be performed if determined to be necessary or appropriate after the first vial is tested.
- 2.11 "Testing Locations"** means the locations where on-site testing will be performed, attached hereto as Exhibit B.
- 2.12 "Title 49 CFR Part 40"** is the United States Department of Transportation Workplace Drug and Alcohol Testing Program Policy, attached hereto as Exhibit C.
- 2.13 "USDOT" or "DOT"** means the United States Department of Transportation.
- 2.14 "Vendor"** means the entity procured through this RFQ to provide to the Agency the services requested.
- 3. GENERAL REQUIREMENTS:**
- 3.1 Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet, and may exceed, the mandatory requirements as shown below.
- 3.1.1 Drug and Alcohol Testing Services**
- 3.1.1.1** The Vendor shall produce random selections for the Agency employees whose job duties place them into the Agency's programs. These employees are divided into four (4) testing pools, and the Agency shall provide, via email to Vender at the start of each quarter, a list of the Agency employees within each pool.
- 3.1.1.1.1** The DOH USDOT-regulated testing pool of not more than 3000 employees must be administered in compliance with Title 49 CFR Parts 40 and 382. Accordingly, quarterly random selections will be accomplished within those same regulations by the Vendor.
- 3.1.1.1.2** The DOH second testing pool of not more than 400, contains employees whose tests

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are defined commonly as non-DOT tests. For this testing pool the vendor will use split sample collections, a certified laboratory, and MRO oversight, generally mirroring a DOT collection, storage, and mailing process.

**3.1.1.1.3** The Parkways Authority testing pool of not more than 100 must be maintained in compliance with Title 49 CFR Parts 40 and 382. Accordingly, quarterly random selections will be accomplished within those same regulations by the Vendor.

**3.1.1.1.4** The State Rail Authority testing pool of not more than 30 must be maintained in compliance with Title 49 CFR parts 40 and 382. Accordingly, quarterly random selections will be accomplished within those same regulations by the Vendor.

**3.1.1.2** The Vendor shall provide and ensure availability for mobile, on-site collections of urine in compliance with Title 49 CFR Part 40.

**3.1.1.2.1** Vendor shall provide all necessary collection and identification supplies and shall be responsible for the transport, and associated transportation costs thereof, from the collection site to a SAMHSA certified laboratory.

**3.1.1.2.2** The split sample method of collection, handling, and storage is to be utilized.

**3.1.1.2.3** The Vendor shall ensure the use of gas chromatography/mass spectrometry technology, a confirmatory test on all positive drug screens.

**3.1.1.2.4** Vendor shall ensure that all urine sample collections requiring direct observation (includes return-to-duty testing and any subsequent testing) are scheduled and performed at a site at which the necessary personnel, by gender, who will observe such testing are available at the site at the scheduled time of testing.

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- 3.1.1.3** The Vendor will provide for mobile, on-site (breath) alcohol testing.
  - 3.1.1.3.1** Tests must be conducted using equipment approved by the USDOT and found on its Conforming Products List at <https://www.transportation.gov/odapc/Approved-Evidential-Breath-Testing-Devices>.
  - 3.1.1.3.2** Vendor shall be responsible for ensuring that the breath testing devices are fully functional, and their assigned mobile personnel are trained and familiar with each device's performance, use and care.
  - 3.1.1.3.3** Vendor shall be responsible for ensuring that any site to be utilized for such testing has on-site at the scheduled testing time the necessary breath alcohol testing equipment.
  - 3.1.1.3.4** Tests must follow USDOT collection protocols, found in Title 49 CFR Part 40.
  - 3.1.1.3.5** The vendor must provide for a confirmatory breath alcohol test on all breath concentrations measuring at 0.02 percent blood-alcohol content, or above.
- 3.1.1.4** The on-site testing locations, dates, and arrival times will be identified and confirmed through the Agency's Drug & Alcohol Testing Coordinator each quarter. The Coordinator is a designee, acting on behalf of the Agency's Human Resources Director.
- 3.1.1.5** Upon arrival at an Agency location, the Vendor will not begin random testing without the presence of the Agency's site supervisor, duly assigned to oversee that location's testing process. The Agency shall provide to Vendor upon execution of a contract a list of all Agency site supervisors, and Agency shall notify Vendor of any changes to such list.
- 3.1.1.6** The Vendor must include and delineate in its per-test cost the cost of a qualified MRO.
  - 3.1.1.6.1** The MRO providing services for the Vendor must be a full-time MRO.
- 3.1.1.7** The Vendor shall provide mobile testing and testing services Monday through Friday between and

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throughout the hours of 6:30 am and 5:00 pm Eastern time.

**3.1.1.7.1** After hours services (including Saturday and Sunday collections, and State holidays) shall be required in emergency situations. Agency shall provide to Vendor as much advance notice as practicable after Agency determines that an incident requiring testing has occurred.

**3.1.1.8** The Vendor shall provide a secure, internet-based, scheduling portal for use by Agency coordinators to schedule daily testing appointments for Agency employees, or prospective employees, utilizing pre-determined, statewide clinics.

**3.1.1.8.1** Web-portal systems must be eSCREEN (Alere Toxicology), FormFox (Clinical Reference Labs), or an equivalent web-based system that has been approved by WVDOT. The portal system must offer ample testing locations statewide to accommodate statewide coverage for testing. A combination of portal solutions is acceptable. Vendor must identify their portal solution in the bid response.

**3.1.1.8.2** Portal test providers must utilize specific Federal DOT testing methodology and must have experience with completing Federal DOT testing forms. Portal providers must offer sufficient testing locations to meet DOT statewide demand for pre-employment, return-to-duty, follow-up, post-accident, reasonable suspicion, and random drug/alcohol testing.

**3.1.1.8.3** Vendor shall be responsible for verifying the capability, hours of operation, and availability of necessary equipment, trained personnel, and all other pertinent aspects of each clinic or testing location to be utilized as part of Vendor's network.

**3.1.1.8.4** Vendor shall be responsible for all payments to clinic locations and Agency shall forward clinic correspondences to Vendor regarding same.

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- 3.1.1.8.5** The scheduling portal's clinic locations shall allow for direct-observed urine collections (as per 49CFR40.67) within 49 miles of any Agency facility listed within Exhibit B.
  - 3.1.1.8.6** Vendor shall ensure that staff and personnel at the clinic locations are appropriately trained in DOT testing procedures and shall verify that testing sites provide direct-observed testing procedures.
  - 3.1.1.8.7** Upon execution of the contract, vendor shall provide the Agency a current list of MROs affiliated with the scheduling portal and notify them of changes during the contract period as well.
  - 3.1.1.8.8** Any such portal shall be maintained by Vendor or its associate and shall be compatible, if necessary, with existing Agency hardware. Any Agency data placed on or utilized within such portal shall be Agency's property and shall not be utilized or accessed by Vendor without written prior consent of Agency. In no circumstance shall Vendor allow any unauthorized access to Agency data within the portal.
  - 3.1.1.8.9** Any such portal will be used daily and must prove reliable in its availability, functioning and execution. Qualities and functions of portal are subject to Agency review.
  - 3.1.1.8.10** Development and design of the portal must ensure privacy and strong security controls by using authentication/passwords, pre-authorizing all users, and confidential handling of data.
- 3.1.1.9** The Vendor shall provide at no additional cost to the Agency a secure, internet-based result reporting module for tracking, management, and record maintenance of the Agency programs. The internet-based result reporting site utilized must contain all necessary components to permit the MRO's report to be submitted and contained in the database. It is understood that this feature is often contained within most web-based scheduling portals, but these contract items will apply



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should the vendor provide testing results through a separate, stand-alone reporting site.

**3.1.1.9.1** The vendor must provide the Agency with access to the internet-based site including capabilities to search for testing results through use of an employee's, or prospective employee's identification number, name, date of test, specimen identification number, and/or other indicators.

**3.1.1.9.2** The Vendor may be required to provide to the Agency, in person and at no additional cost to the Agency, a demonstration of all functions relative to program tracking, management, and record maintenance. Vendor also shall provide to Agency a written "user" manual describing these same functions and the manner by which they are accessed and utilized, to facilitate Agency operations.

**3.1.1.9.3** The Agency reserves the right 1) to determine acceptability based on the security of transmission, the limit of access to any transmission, storage, retrieval systems, ease of use, or compatibility with existing Agency systems and hardware; and 2) to approve or reject software or internet-based result reporting.

**3.1.1.9.4** The Vendor shall identify on the pricing pages the software(s) or internet-based result reporting proposed for use under this contract, and failure to do so shall result in rejection of the solicitation response (bid).

**3.1.1.10** The Vendor shall ensure that strict rules of confidentiality are followed by all Vendor representatives and other parties utilized by Vendor. The Vendor shall complete and provide to Agency, upon execution of contract with Agency, a HIPAA Business Associate Addendum (Exhibit D), and shall adhere to responsible practices regarding the handling, storing, transmitting, or receiving of Protected Health Information.

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3.1.1.11 The Vendor must submit, upon the Agency's request, a list of sub-contractors used for the maintenance of this contract.

3.1.1.12 The Vendor shall provide on the pricing pages (Exhibit A) its costs for general drug and alcohol testing services.

3.1.1.13 The Agency will pay the Vendor for each documented test processed at the agreed per-test rates.

**4. CONTRACT AWARD:**

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

**4.2 Pricing Pages:** All per-test costs are to be based upon an all-inclusive process of scheduling, collection, analysis, certification of results, and proper reporting to the Agency of such results. Alcohol screenings and drug screenings require separate pricing. Screenings performed during business hours require separate pricing from screenings performed after hours. The Vendor should complete the Pricing Pages in their entirety, as failure to do so may result in Vendor's bids being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume of each. The estimated purchase volume for each item represents only the anticipated purchases to be made under this Contract, and no future use of the Contract or any individual item is guaranteed or implied.

Notwithstanding the foregoing, the Purchasing Division may correct mathematical errors at its discretion. Vendor should type or electronically enter the information into the Pricing Pages to minimize the potential for errors in the evaluation and to better ensure legibility of the information. The Pricing Pages are available as a spreadsheet document, in Microsoft Excel format, and the Vendor may request for bid purposes an electronic copy of the spreadsheet, by sending an email request to the following address: [john.weston@wn.gov](mailto:john.weston@wn.gov). Vendor must request the spreadsheet no later than five (5) business days prior to the submission date of the RFQ.

**5. ORDERING AND PAYMENT:**

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- 5.1 Ordering:** Vendor shall accept drug or alcohol orders through a secure, internet ordering portal/website. Vendor should include in its response a brief description of how the Agency may utilize the on-line ordering system and shall verify and ensure that its on-line ordering system is secure, prior to processing Agency orders on-line.
- 5.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. Vendor is fully responsible for the payment of clinics, labs, hospitals, MRO's, or other sub-contractors utilized to provide services under this contract.

**6. DELIVERY AND RETURN:**

- 6.1 Delivery Time:** The web-based portal should allow for the destination clinics to see the Agency's detailed testing requests soon after entry is made, thus allowing our applicants or employees to proceed to the designated clinic. When outside of normal business hours the Vendor shall begin the scheduling process immediately upon notification from the Agency when emergency issues (Post-Accident or Reasonable Suspicion) are involved. The Vendor shall supply to the Agency and keep current twenty-four (24) hour/daily-availability contact information for Agency's use when a time-sensitive testing scenario arises, and Vendor should respond to the Agency's requests within one (1) hour to relay all necessary details to complete the tests.
- 6.2 Late Delivery:** There will be no late fees. All billing and payments will conform with the per-test costs identified on the Pricing Page (Exhibit A), and will be charged corresponding to the type of test completed.
- 6.3 Delivery Payment/Risk of Loss:** Agency will incur no cost if the testing sample is discarded, damaged, misplaced, rendered unusable, or destroyed by the direct or indirect actions or omissions of the Vendor, its representatives or agents, whether willful or not.
- 6.4 Return of Unacceptable Items:** If the Agency deems a Contract Item or Service to be unacceptable, Agency shall notify the Vendor, in writing, of the Agency's concerns and the Vendor then shall timely address Agency's concerns to maintain efficiency and protect the integrity of the Agency's testing program. Additionally, any action that does not meet the federal regulations will be unacceptable. If the Agency requests that Vendor resend reports or forms due to mailing damage or digital file problems, the Vendor will not charge Agency an additional, or penalty fee. If Vendor cannot remedy the Agency's concerns, Agency then may take steps up to termination of the contract, depending on the severity of the flaw or unacceptable performance issue.

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- 6.5 Return Due to Agency Error:** The Agency reserves the right to cancel testing at any time for an individual or group due to extenuating circumstances, the needs of the State, or Agency error. Agency will provide to Vendor notice of cancellation of testing as soon as practicable, however Vendor will not charge the Agency an additional, or penalty fee.

**7. VENDOR DEFAULT:**

**7.1** The following shall be considered a Vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, regulations, or ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance after notification by Agency.

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

- 7.2.1** Immediate cancellation of the Contract.
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** Any other remedies available in law or equity.

**8. MISCELLANEOUS:**

- 8.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation, unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 Vendor Supply:** Vendor must maintain sufficient management of the services, systems, and resources being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

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**XX-XX-XXXXXX Drug and Alcohol Testing Services**

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- 8.3 Reports:** Vendor shall provide to the Agency quarterly random testing reports showing the selected employees and shall provide by February 15th each year an annual summary, on a calendar year basis, reporting the number of drug and alcohol tests within each testing category. Annual drug and alcohol testing reports must show DOT-regulated employees' information separately from non-regulated employees' testing information. Failure to supply such reports may be grounds for cancellation of this Contract.
- 8.4 Contract Manager:** During its performance of this Contract, Vendor shall designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during regular business hours to address any customer service or other issues related to this Contract. Vendor is to list its Contract manager and his or her contact information below.

**Contract Manager:** Jennifer Ellis  
**Telephone Number:** 304-784-7406  
**Fax Number:** 304-855-7486  
**Email Address:** testing@qualitydrug.co

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: CRFO DOT2400000104**

**Instructions:** Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

**Acknowledgment:** I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

**Addendum Numbers Received:**

(Check the box next to each addendum received)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2            | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3            | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4            | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5            | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Quality Drug Testing  
Company  
[Signature]  
Authorized Signature  
8-8-24  
Date

**NOTE:** This addendum acknowledgment should be submitted with the bid to expedite document processing.

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<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
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Quality Drug Testing  
Company  
[Signature]  
Authorized Signature  
8/8/24  
Date

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## **WV DOT RANDOM TESTING SITES**

DOH - Materials Division, Technical Support Division & Traffic Engineering Division,

190 Dry Branch Dr, Charleston, WV 25306

DOH - Maintenance Division, Random testing scheduled statewide at various clinics or Hospitals due to these are smaller units that are frequently dispatched to various, cross-State work sites.

DOH - Equipment Division, 83 Brushy Fork Rd., Buckhannon, WV 26201

### **DOH District One**

District One HQ, 1340 Smith St, Charleston, WV 25301  
N. Charleston, 2800 Washington St W, Charleston, WV 25387  
St. Albans, 2334 MacCorkle Ave, St. Albans, WV 25177  
Mason County, 225 Fairground Rd, Pt. Pleasant, WV 25550  
Chelyan, 14987 MacCorkle Ave, Cabin Creek, WV 25035  
Boone County, 203 DOH Garage Rd, Danville, WV 25053  
Putnam County, 3256 Teays Valley Rd., Hurricane, WV 25526  
Elkview, 904 Old Frame Rd., Elkview, WV 25071  
Clay County, 4476 Triplett Ridge Rd., Clay, WV 25043

### **DOH District Two**

District Two HQ, 801 Madison Ave, Huntington, WV 25712  
Cabell County, 6200 Route 60 East, Barboursville, WV 25504  
Mingo County, #1 DOH Garage Rd., Williamson, WV 25561  
Wayne County, 326 Central Ave., Wayne, WV 25571  
Lincoln County, 5829 McClellan Hwy., Branchland, WV 25506  
Logan County, 8100 Old Logan Rd., Chapmanville, WV 25508

### **DOH District Three**

District Three HQ, 624 Depot St. Parkersburg, WV 26101  
Wood County, 905 Lubeck Ave., Parkersburg, WV 26101  
Jackson County, 946 Clay Lick Rd., Ripley, WV 25271  
Roane County, 269 Charleston Rd., Spencer, WV 25276  
Wirt County, 256 Schoolview St., Elizabeth, WV 26143  
Calhoun County, 7619 S. Calhoun Hwy., Millstone, WV 25261  
Pleasants County, 401 2<sup>nd</sup> St., Belmont, WV 26134  
Ritchie County, 731 Ellenboro Rd., Harrisville, WV 26362  
Pennsboro/Corridor D, 41 Ritchie Ind Pk Rd, Pennsboro, WV 26145

#### **DOH District Four**

District Four HQ, 2460 Murphy's Run Rd., Bridgeport 26330  
Monongalia County, 1510 Grafton Rd., Morgantown, WV 26508  
Marion County, 916 Country Club Rd., Fairmont, WV 26554  
Preston County, 1912 St. Joe Rd., Albright, WV 25619  
Taylor County, 1340 Taylor Co. Access Rd., Webster, WV 26354  
Harrison County, 119 Railcross Rd., Gore, WV 26301  
Doddridge County, 1993 Smithton Rd., West Union, WV 26456

#### **DOH District Five**

District Five HQ, 2120 North Western Tpk, Burlington, WV 26710  
Hampshire County, 56 DOH Dr., Romney, WV 26757  
Morgan County, 166 DOH Ln., Berkeley Springs, WV 25411  
Berkeley County, 1867 Rock Cliff Dr., Martinsburg, WV 25401  
Jefferson County, 1301 Old Leetown Pike, Kearneysville, WV 25430  
Hardy County, 2104 State Route 55, Moorefield, WV 26836  
Grant County, 930 Lunice Ck Hwy, Petersburg, WV 26847  
Mineral County, 10800 NW Tpk., New Creek, WV 26743

#### **DOH District Six**

District Six HQ – 1 DOT Dr., Moundsville, WV 26401  
Brooke County, 2935 Commerce St., Wellsburg, WV 26070  
Hancock County, 1936 Veterans Blvd, New Cumberland, WV 26047  
Wetzel County, 641 North State Route 2, New Martinsville 26155  
Tyler County, 2566 Tyler Hwy., Sistersville, WV 26175

#### **DOH District Seven**

District Seven HQ, 131 Highland Dr., Weston, WV 26452  
Webster County, 32 Sandy Run Rd, Webster Springs, WV 26288  
Braxton County, 1001 State St., Gassaway, WV 26624  
Gilmer County, 3531 US Hwy 33 East, Glenville, WV 26351  
Upshur County, 493 Mudlick Rd., Buckhannon, WV 26201  
Barbour County, 1439 Mansfield Dr., Philippi, WV 26416

#### **DOH District Eight**

District Eight HQ, 1101 N. Randolph Ave., Elkins, WV 26241  
Randolph County, 76 County Club Rd., Elkins, WV 26241  
Pocahontas County, 25 Brush Country Rd. Marlinton, WV 24954  
Pendleton County, 131 Maple Ave., Franklin, WV 26807  
Tucker County, 9209 Seneca Trail, Parsons, WV 26287

### **DOH District Nine**

Greenbrier County, 2820 N. Jefferson St., Lewisburg 24901  
Nicholas County, 777 Turnpike Rd., Summersville, WV 26651  
Fayette County, 3121 Main St. E., Oak Hill, WV 25901  
Monroe County, 875 Sweet Springs Valley Rd., Union, WV 24983  
Summers County, 20414 State Rt. 12, Hinton, WV 25951

### **DOH District Ten**

District Ten HQ, 270 Hardwood Ln., Princeton, WV 24740  
Wyoming County, 1409 Bearhole Rd., Pineville, WV 24874  
Raleigh County, 379 Market Rd., Beckley, WV 25801  
Mercer County, 454 New Hope Rd., Princeton, WV 24740  
McDowell County, 100 Headquarters Ln., Havaco, WV 24801  
Coalfields Expressway, 1790 Robert C. Byrd Dr., Beckley, WV 25801

***Random collections for these two organizations will be coordinated individually with the individual named below or the Human Resources Coordinator. State Rail's drug and alcohol collections are subject to FRA regulations, and Parkways' are subject to FMCSA regulations.***

**WV State Rail Authority** Contact: Cindy Butler, Commissioner- Division of Multimodal Transportation Facilities, 304-538-2305, ext 66842

120 Water Plant Dr., Moorefield, WV 26836

**WV Parkways Authority** Contact: Tyrone Gore, Director of Training and Safety, 304-561-0539

Two random collection locations: Standard, WV and Beckley, WV

## 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.
- l. **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: WV DOT

Signature: Carla Rottach

Title: Business Manager

Date: 8/16/24

Name of Associate: Qualitycleng Testing, Inc

Signature: Jeff Eri

Title: President

Date: 8/8/2024

Form - WVBAA-012004  
Amended 06 26 2013

APPROVED AS TO FORM THIS 26th  
DAY OF Jan 20 13  
BY Patrick Morrissey  
Attorney General

## 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: Jennifer Ellis

Name of Agency: Quality Drug Testing

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