

CLINICAL LABORATORY SERVICES AGREEMENT

This agreement ("Agreement") is between Eurofins Central Laboratory, LLC ("Eurofins" or "Lab Provider") and the Commonwealth of Pennsylvania ("Commonwealth") acting through the Department of Health ("Department"). Each of Eurofins and Commonwealth may be referred to as a "Party" to this Agreement, and together, the "Parties."

The purpose of this Agreement is to express the agreement and terms for Eurofins to provide the COVID-19 Laboratory Services as set forth in Section 3 and Exhibit A of this Agreement in furtherance of the goal of expanding testing capabilities in the Commonwealth.

The Parties, intending to be legally bound, agree as follows:

1. Effective Date.

The Effective Date of this Agreement shall be the date that it has been fully executed by both Parties and all approvals required by the Commonwealth's contracting procedures have been obtained, as indicated by the date of the last signature.

2. Term; Default; Termination; Survival.

- a. This Agreement shall be effective from the Effective Date and expire twelve (12) months from the Effective Date, subject to its other provisions unless terminated earlier by either Party according to the termination provisions of this Agreement. The Commonwealth may renew this Agreement for up to six (6) consecutive 30-day periods by providing written notice at least fifteen (15) calendar days prior to expiration.
- b. The Commonwealth may, subject to the provisions below, by written notice of default to the Lab Provider, immediately terminate upon such terms as said notice shall set forth, the whole or any part of this Agreement in any one of the following circumstances:
 - i. If the Lab Provider fails to perform the services within the time specified herein or any extension thereof; or
 - ii. if the Lab Provider fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) calendar days (or such longer period as the Commonwealth may authorize in writing) after receipt of notice from the Commonwealth specifying such failure.
- c. If this Agreement is terminated as provided in sub-paragraph (a) above, the Commonwealth shall require the Lab Provider to transfer title and deliver to the Commonwealth such partially completed reports or other documentation as the Lab

Provider has produced under this Agreement. Payments for completed reports and other documentation delivered to and accepted by the Commonwealth shall be at the Agreement price. Payment for partially completed reports and other documentation delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Parties. The Commonwealth may withhold from amounts otherwise due the Lab Provider for such completed or partially completed reports or other documentation such sum as the Commonwealth determines to be necessary to protect it against loss because of outstanding liens or claims of former lien holders.

- d. The Commonwealth may cancel this Agreement, in whole or in part, at any time for the convenience of the Commonwealth by giving written notice to the Lab Provider. Should the Commonwealth exercise its rights under this clause, the Commonwealth will pay the Lab Provider for all work done by the Lab Provider under this Agreement until such time as the Commonwealth sets forth in its written notice to Lab Provider.
- e. Should the Lab Provider become insolvent, or if proceedings in bankruptcy shall be instituted by or against the Lab Provider, the remaining or unexpired portion of this Agreement may, at the election of the Commonwealth, be terminated.
- f. In addition, this Agreement may be cancelled by either Party upon thirty (30) calendar days' advance written notice.

3. Laboratory Services.

The clinical laboratory testing services: location set-up, analytical testing, kits and supplies, transportation and MD authority fees covered in this Agreement ("Laboratory Services") will be as set forth in Exhibit A, attached hereto, which may be amended from time to time by Eurofins or Commonwealth. During the Term, Eurofins agrees to perform the Laboratory Services requested by Commonwealth in a manner consistent with professionally recognized standards of health care.

4. Pricing.

Eurofins agrees to charge, and Commonwealth agrees to pay, the pricing amounts set forth in Exhibit A for all Laboratory Services provided under this Agreement. The fees set forth in Exhibit A shall remain fixed during the Initial Term. Thirty (30) calendar days before the end of the Initial Term or any renewal Term, Eurofins may review and adjust the pricing amounts set forth in Exhibit A, and such adjustments shall be effective as of the first date of the subsequent Renewal Term. Notwithstanding the foregoing, commencing on the first anniversary of the Effective Date of the Agreement and on each anniversary thereafter, the fees set forth on Exhibit A will increase by the annual Consumer Price Index change for the preceding year, or three percent (3.0%), whichever is lower, ~~except the fees set forth on Exhibit A.~~

KA
6/22/2020
For Eurofins
DAS
6/22/20
For PA Dolt

5. Ordering Tests and Shipping Specimens.

Commonwealth may order Eurofins tests by one of these methods:

- a. Complete a Eurofins Test Request Form and include it with each specimen shipped to Eurofins. Eurofins will provide Commonwealth with Personalized Test Request Forms. Commonwealth will be responsible for all tests ordered via such Customized Test Request Forms.
- b. Access Eurofins' web-based ordering and reporting system.

In each case, specimens should be shipped according to Eurofins' specimen requirements in the shipping materials provided by Eurofins. Eurofins and Commonwealth will work together to coordinate a specimen shipping arrangement with courier. Shipping services provided by Eurofins may vary by location.

6. Payment Terms: Billing.

Eurofins will invoice Commonwealth for Laboratory Services provided. Payment shall be due within forty-five (45) calendar days of the invoice date.

If Commonwealth disputes any portion of an invoice, then Commonwealth shall provide written notice to Eurofins of such dispute within ten (10) business days of its receipt of such invoice and shall pay all undisputed amounts. The Parties shall use good faith efforts to reconcile the disputed amount as soon as practicable.

All amounts due and owing hereunder shall be invoiced and paid in U.S. Dollars.

7. Test Results.

Eurofins will provide specimen test results, in the form agreed upon by the Parties and consistent with the Pennsylvania Electronic Laboratory Reporting ("PA-ELR") process, to Commonwealth consistent with Eurofins' testing schedules set forth in Eurofins' test directories, as applicable, as in effect as of the Effective Date. Eurofins will provide specimen test results to long-term care facility administrators via an online portal.

8. Specimens That Cannot Be Tested.

A specimen cannot be tested if it is not the appropriate specimen for the Laboratory Services, e.g. the specimen does not meet the specimen collection requirements specified in Eurofins' directory of services, the quantity is not sufficient ("QNS"), the specimen has arrived too late to test for time-sensitive specimens or the specimen integrity is questionable. If Eurofins receives, from Commonwealth, a specimen that cannot be tested, Eurofins will notify Commonwealth via a report of the reason for not performing the requested testing. If Commonwealth instructs Eurofins to perform the testing, Eurofins

will perform the testing with a disclaimer. Commonwealth will be responsible for paying for Laboratory Services performed on that specimen.

9. Confidentiality.

“Confidential Information” means any information or materials disclosed by or on behalf of such Party relating to such Party’s business or operations that the other Party learns about in the course of negotiating this Agreement or due to entering into this Agreement (a) that is not generally known other than by the disclosing Party and (b) that the receiving Party knew or should have known was confidential or proprietary. Each Party shall (i) advise each of its permitted recipients of the confidentiality obligations set forth herein and shall require each such permitted recipient to comply with such obligations, and (ii) shall maintain appropriate and adequate safeguards, policies and procedures to protect the other Party’s Confidential Information against unauthorized use, disclosure, alteration or destruction. Each Party shall be responsible for any breach of the confidentiality obligations set forth herein by its permitted recipients.

10. Right-to-Know Law.

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Agreement. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Lab Provider’s assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Lab Provider using the legal contact information provided in this Agreement. The Lab Provider, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Lab Provider’s assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Lab Provider’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Lab Provider shall:
 - i. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Lab Provider’s possession arising out of this Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - ii. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- d. If the Lab Provider considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by

the RTKL, or other information that the Lab Provider considers exempt from production under the RTKL, the Lab Provider must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Lab Provider explaining why the requested material is exempt from public disclosure under the RTKL.

- e. The Commonwealth will rely upon the written statement from the Lab Provider in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Lab Provider shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If the Lab Provider fails to provide the Requested Information within the time period required by these provisions, the Lab Provider shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Lab Provider's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Lab Provider for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Lab Provider may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts; however, the Lab Provider shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Lab Provider's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the Parties, the Lab Provider agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Lab Provider's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Lab Provider has Requested Information in its possession.

11. Compliance with Laws.

Each Party shall comply with all applicable laws, rules and regulations that relate to the conduct of the Parties' businesses and the performance by the Parties of their respective obligations under this Agreement, and any necessary agreements, including (without

limitation) all applicable laws, rules and regulations regarding the collection, access, use, disclosure, electronic transmission, protection or storage of individually identifiable health information of patients.

Lab Provider further agrees that, to the extent permitted by law, if it is reimbursed by the Federal Emergency management Agency, U.S. Commonwealth of Health and Human Services, or any other third-party payor for expenditures that were made by the Commonwealth under this Agreement, it will reimburse the Commonwealth for such expenditures.

12. Insurance.

Each Party agrees that each is responsible for its own insurance and will maintain appropriate coverage for its respective activities under this Agreement. Lab Provider agrees to furnish upon request a current and valid Certificate of Insurance, or proof of adequate self-insurance, evidencing its general liability and professional liability insurance coverage.

13. Licensure; Intellectual Property Rights.

Each of the Parties shall comply with all applicable licensing, certification and accreditation standards and requirements. Each Party shall provide documentation of such credentials upon the other Party's request. Eurofins hereby represents and warrants that Eurofins either owns, and will continue to own, all patents and other intellectual property rights necessary and appropriate to perform the Laboratory Services, or holds, and will continue to hold, valid licenses to such patents and other intellectual property rights.

14. HIPAA Compliance.

Lab Provider shall comply with the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, and related regulations promulgated by the Secretary of Health and Human Services (commonly referred to as the "HITECH Act") and the Health Insurance Portability and Accountability Act of 1996, 42 USC § 1320d ("HIPAA") and the regulations promulgated thereunder, including, without limitation, the federal privacy regulations (45 CFR Parts 160 and 164), the federal security standards (45 CFR Part 142), and the federal standards for electronic transactions (45 CFR Parts 160 and 162).

15. Independent Contractors.

For purposes of this Agreement, Eurofins and Commonwealth are independent contractors. Each is solely responsible to select, engage and discharge its employees and other personnel, to determine and pay their compensation and benefits, and otherwise to direct and control their services and determine all matters.

16. Offset Provision.

Lab Provider agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Lab Provider or its subsidiaries to the Commonwealth against any payments due the Lab Provider under any contract with the Commonwealth.

17. Force Majeure.

Any acts of God or other causes beyond the reasonable control of a Party (and which do not arise out of a breach by a Party of its obligations hereunder) which prevent a Party from fulfilling its duties as set forth herein shall not constitute a breach of this Agreement by such Party and will operate to suspend the obligations of such Party during the period required to remove such cause. A Party whose obligations are so suspended will notify the other promptly of the occurrence of any such event and will use its best efforts to minimize the duration and disruption of any such event.

18. Use of Name and Press Releases.

Neither Party shall use the name, insignia, symbol, trademark, service mark, trade name, logos or any other information, design or device that identifies the other Party in any publication, media release, promotional or marketing material or activities, or other form of publicity without the prior written approval of the other Party, which shall not be unreasonably withheld.

19. Complete Agreement.

This Agreement constitutes the entire agreement between the Parties and may be amended only in writing executed by both Parties. This Agreement supersedes any and all earlier oral or written understandings or agreements between the Parties.

20. Successors and Assignment.

This agreement shall be assignable only to affiliates under the direct control of or under common control with each Party or to a successor organization of all or substantially all of the assets of the assigning entity. Any other assignment shall require the approval of the other Party, such approval not to be unreasonably withheld.

21. Severability.

The invalidity or unenforceability of any section of this Agreement shall not affect the enforceability of any other section, and this Agreement shall be construed in all respects as if such invalid or unenforceable section were omitted, unless such an interpretation would be contrary to the intent of the Parties.

22. Governing Law.

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. Eurofins consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. Eurofins agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

23. Non-Discrimination/Sexual Harassment.

Eurofins agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, Eurofins, each subcontractor, or any person acting on behalf of Eurofins or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates.
- b. Neither Eurofins nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement.
- c. Neither Eurofins nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the Agreement.
- d. Neither Eurofins nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- e. Eurofins and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this

Nondiscrimination/Sexual Harassment Clause conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.

- f. Eurofins and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the Agreement relates.
- g. Eurofins and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. Eurofins and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. Eurofins and each subcontractor shall, upon request and within the time periods requested by Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Non-discrimination/Sexual Harassment Clause.
- h. Eurofins shall include the provisions of this Non-discrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- i. Eurofins and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, Eurofins and each subcontractor shall have an obligation to inform Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- j. Commonwealth may cancel or terminate the Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Non-discrimination/Sexual Harassment Clause. In addition, the Commonwealth may proceed with debarment or suspension and may place Eurofins in the Contractor Responsibility File.

24. Contractor Responsibility Provisions.

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the Effective Date of this Agreement through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (15) calendar days of the date of suspension or debarment.
- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Agreement with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

25. Contractor Integrity Provisions.

It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

- a. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
- i. "Affiliate" means two (2) or more entities where (a) a parent entity owns more than fifty percent (50%) of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent (50%) of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - ii. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - iii. "Contractor" means the individual or entity, that has entered into this Agreement with the Commonwealth.
 - iv. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
 - v. "Financial Interest" means either:
 - A. Ownership of more than a five percent (5%) interest in any business;
or

- B. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- vi. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- vii. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- b. In furtherance of this policy, Contractor agrees to the following:
 - i. Contractor shall maintain the highest standards of honesty and integrity during the performance of this Agreement and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
 - ii. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
 - iii. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this Agreement, except as provided in this Agreement.
 - iv. Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal

submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

- v. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - A. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - B. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - C. had any business license or professional license suspended or revoked;
 - D. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - E. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- c. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this Agreement was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- d. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such

ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

- e. Contractor, by submission of its bid or proposal and/or execution of this Agreement and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the Agreement, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, Agreement or subcontract it enters into in the course of the performance of this Agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.
- g. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this Agreement and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another Contractor to complete performance under this Agreement, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of anyone shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise

26. Americans With Disabilities Act.

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Lab Provider understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this Agreement, the Lab Provider agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.
- b. The Lab Provider shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any Party against the Commonwealth as a result of the Lab Provider’s failure to comply with the provisions of subparagraph (a) above.

27. PREP Act Immunity.

Lab Provider is entitled to PREP Act immunity. The Secretary of HHS issued a Declaration under the Public Readiness and Emergency Preparedness Act ("PREP Act") for medical countermeasures against COVID-19 dated March 10, 2020 (the "Declaration"). See 85 Fed. Reg. 15,198 (March 17, 2020); see also Pub. L. No. 109-148, Public Health Service Act § 319F-3, 42 U.S.C. § 247d-6d and 42 U.S.C. § 247d-6e.

The PREP Act and Declaration cover and immunize from liability for damages “Covered Persons,” which may include Companies (specifically including commercial labs), as well as any of the Company's officials, agents, employees, contractors and volunteers working in collaboration with federal, state or local governmental agencies with respect to the Covered Countermeasures.

“Covered Countermeasures” include COVID-19 testing kits and any subcomponent thereof utilized in connection with testing supported pursuant to this Agreement that have been authorized by the Food and Drug Administration, including through an Emergency Use Authorization.

Under the PREP Act and Declaration, Lab Provider, as well as other Covered Persons, are immunized from liability in accordance with the PREP Act and Declaration with respect to the administration of such Covered Countermeasures, which would include, but are not limited to, (i) testing at or for Providers (as defined by the PREP Act), including specimen collection, processing, handling, or shipping specimens, (ii) using or providing real property in connection with efforts to provide specimen collection or testing, (iii) using or

providing personnel or supplies in connection with the collection of specimens or test samples, or otherwise in connection with combatting COVID-19, or (iv) performing COVID-19 testing on specimens collected from any person. This immunity from liability does not depend on any particular specimen collection protocol, which HHS acknowledges may change over time. Nevertheless, HHS encourages all Covered Persons using or administering covered countermeasures to document the reasonable precautions taken to facilitate the safe use of covered countermeasures.

Under the Declaration, immunity will extend to claims of “loss,” as defined in the PREP Act, by those who receive collection or Testing Services related to a Covered Countermeasure, as well as to anyone else involved or in proximity to collection or Testing Services (either to seek testing, or as employees or contractors, or for other purposes), or any other persons or entities who may assert a claim for loss against the Parties related in any way to a Covered Countermeasure and the administration thereof. If all requirements of the PREP Act and the Declaration are met, immunity covers claims for loss sounding in tort or contract, whether arising under state or federal law. The PREP Act immunity does not apply to affirmative actions by the federal government. As provided in the Declaration, immunity applies when a Covered Person engages in activities related to an agreement or arrangement with the federal government, or when a covered Person acts according to an Authority Having Jurisdiction to respond to a declared emergency. These two conditions include (1) any arrangement with the federal government, or (2) any activity that is part of an authorized emergency response at the federal, regional, state, or local level. Such activities can be authorized through, among other things, guidance, requests for assistance, agreements, or other arrangements. Because the Secretary of HHS issued a Public Health Emergency declaration on January 31, 2020, effective as of January 27, 2020, the immunity granted by the PREP Act under this Declaration applies regardless of whether state or local authorities have declared states of emergencies. The PREP Act expressly preempts any Commonwealth and local law that “is different from, or is in conflict with, any requirement applicable under [the PREP Act].” 42 U.S.C. § 247d-6d(b)(8). This preemption authority includes any state or local law, regulation, or other legal requirement that would otherwise apply to the administration of a Covered Countermeasure. In addition, the PREP Act replaces certain damages claims that would normally be brought in court with a no-fault compensation system outlined at 42 C.F.R. 110.

28. Records.

- a. The Lab Provider agrees to maintain program and fiscal records required by the Commonwealth. For purposes of this Agreement, “fiscal and program records” shall include, but not be limited to, books, records, documents, sub-grants or sub-contracts and other evidence pertaining to the costs and expenses of this Agreement, records relating services being provided, statistical information collected in the course of performing services, policies and procedures, information relating to staff and job descriptions, and all information necessary for the Lab Provider to perform the work required under the Agreement.

- b. The Lab Provider agrees to maintain fiscal records to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. If Lab Provider is not a public body, Lab Provider agrees to maintain books, records, documents and other evidence in accordance with accounting procedures and practices which meet generally accepted accounting principles.
- c. The Lab Provider agrees to make available at the Office of the Lab Provider at all reasonable times during the term of this Agreement any of the records for inspection, audit or reproduction by any authorized representative of the Commonwealth, the Commonwealth's Comptroller, the Auditor General, the Inspector General or Federal auditors.
- d. The provisions of this Paragraph shall be applicable to and included in each sub-grant or sub-contract entered into by the Lab Provider in the performance of this Agreement.
- e. The Lab Provider shall preserve and make available its records for a period of four (4) years from the date of final payment under this Agreement, and for such period, if any, as is required by applicable statute, by any other Paragraph of this Agreement, or by sub-paragraphs (i) or (ii) below.
 - i. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final payment.
 - ii. Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the auditors, shall be retained by the Lab Provider until such litigation, claims, or exceptions have been disposed of.
- f. Except for the records described in sub-paragraph e (ii) above, the Lab Provider may, in fulfillment of its obligation to retain its records as required by this Paragraph, substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two (2) years following the last day of the month of reimbursement to the Lab Provider of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth, with the concurrence of the auditors.

29. Miscellaneous.

The Parties undertake to act in good faith in any matter concerning this Agreement, and to execute in good faith any step that is needed in any way to give effect to any and all undertakings hereunder, according to any applicable law. Any amendment to this

Agreement will be valid only if reduced to writing and signed by all Parties. No agreement or amendment is valid unless all Commonwealth signatures are affixed thereto. The failure on the part of either Party to exercise any of the rights conferred on such Party under this Agreement or under applicable law shall not be deemed to be a waiver thereof by such Party, unless such waiver was done explicitly and in a written notice signed by that Party.

30. Counterpart Execution.

This Agreement may be executed in any number of counterparts (including those delivered by electronic means), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

31. Integration Clause.

The Parties agree that this Agreement constitutes the entire Agreement. To show their agreement to the terms of this Agreement and to be legally bound by such terms, the Parties hereby execute this Agreement as of the Effective Date. Each person signing below certifies that he or she is authorized to bind their respective Party to all terms of this Agreement.

32. Notice.

Any notices, requests, demands and any other communications required or permitted under this Agreement shall be in writing and may be mailed by registered or, certified, first class United States mail, or delivered to the Parties in person at the following addresses:

To Commonwealth:
Attn: Danielle Pierre
625 Forster Street
8th Floor West
Harrisburg, PA 17120


To Eurofins:
Eurofins Central Laboratory, LLC.
Attn: Contracts Department
2430 New Holland Pike, D100
Lancaster, PA 17601

With a Copy To: contractserviceEPCLBIOA@eurofins.com

SIGNATURE PAGE FOLLOWS

IN WITNESSES WHEREOF, the Parties here to have executed this Agreement as of the date of signature.

Eurofins Central Laboratory LLC.



Signature 19Jun2020
Date
Title: Manager

Elena Logan, Manager
Print Name and Title

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH**




Signature 6/22/2020
Date
Title

Sarah Boateng EDS

Print Name and Title

APPROVED AS TO FORM AND LEGALITY:



Office of Chief Counsel 6/22/20
Date

Office of General Counsel Date

Office of Attorney General Date

Comptroller Date



EXHIBIT A

Pennsylvania Department - COVID testing - Q2005090

FPEV - June 29, 2020

LPLV - December 31, 2020

Total: 6 months

1000 PCR specimens/per day ~ six days a week

	Fee	Specimens	Total
COVID - 19 PCR test - qualitative			
Set-up fee - location set-up	\$ 69.00	40750	\$ 2 811 750.00
Collection kit and instruction guide: Optional, unitized cost only	\$ 500.00	100	\$ 50 000.00
Transport solution: Optional, unitized cost only	\$ 16.00	40750	\$ 652 000.00
MD Authority: Optional, Ordering and receiving results	\$ 15.00	40750	\$ 611 250.00
	\$ 10.00	40750	\$ 407 500.00

\$ 4 532 500.00

Results can be fax, emailed or posted to our portal.

Assumptions and Payment Terms:

Monthly invoices are based on the actual number of samples included and/or services provided, unless otherwise directed.

