

## **LABORATORY SERVICES AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Mercer County Schools, (“CLIENT”) and Laboratory Corporation of America Holdings (“LABORATORY”).

WHEREAS, LABORATORY is engaged in the business of providing reference clinical laboratory services (the “Services”); and

WHEREAS, CLIENT desires to contract with LABORATORY to provide reference clinical laboratory services for CLIENT, and LABORATORY desires to provide the Services described herein.

IT IS THEREFORE AGREED AS FOLLOWS:

### **1. TERM AND TERMINATION**

This Agreement shall become effective on the date set forth above and shall continue in effect until terminated by either party. This Agreement shall have an initial term of one (1) year (“Initial Term”) and shall be automatically renewed for additional periods of one (1) year (“Renewal Term”) at the end of the Initial Term or any Renewal Term, unless previously terminated by either party.

This Agreement may be terminated by either party, with or without cause, at any time, by giving the other party thirty (30) days prior written notice to the address set forth in Section 10.

### **2. TESTING SERVICES**

LABORATORY agrees to perform such Services for CLIENT as may be requested by CLIENT, if available, during the term of this Agreement. The Services shall include those tests listed in LABORATORY’s current Directory of Services, as the same may be modified from time to time by LABORATORY and such additional services as the parties may agree to in writing.

The service area under this Agreement shall be the state of Kentucky (“Service Area”).

### **3. ADDITIONAL SERVICES**

#### **A. SPECIMEN PICK UP AND REPORT DELIVERY**

LABORATORY will provide a reference specimen pick up and report delivery service to CLIENT on a daily basis Monday through Friday of each week, except on holidays. For the purposes of this Agreement, holidays shall include New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. LABORATORY shall make reasonable efforts to deliver or transmit results of a routine nature (general routine chemistries) to CLIENT within 24 hours of the time the specimen is received by LABORATORY’s testing facility. LABORATORY shall make reasonable efforts to deliver or transmit results of tests performed on specimens of a special nature (special chemistries, tissues, etc.) to CLIENT within the times set forth in LABORATORY’s then current turn-around-time schedule. LABORATORY shall report panic or critical values performed at LABORATORY facilities in a manner consistent with LABORATORY’s standard policies and procedures.

#### **B. SUPPLIES**

LABORATORY will provide, as part of its charges for the Services, such items, devices or supplies that are used solely to collect, transport, process or store specimens to be submitted to LABORATORY for testing.

#### **C. CONSULTATION**

LABORATORY staff shall be available to consult with CLIENT by telephone during normal LABORATORY working hours to discuss LABORATORY’s procedures and to provide the status of test results.

#### **4. FEES**

CLIENT agrees to pay, to the extent responsible for payment, for the Services provided under this Agreement the fees set forth in Exhibit A. For services sent to another reference laboratory for testing, CLIENT shall pay the greater of (a) the fees listed in Exhibit A and (b) the charges to LABORATORY for reference testing performed by the laboratory not owned by or affiliated with LABORATORY. After the Initial Term of this Agreement, CLIENT and LABORATORY agree that fees shall either increase on the renewal date hereof or with LABORATORY's general annual fee increase of which CLIENT shall receive thirty (30) days written notice. CLIENT and LABORATORY acknowledge and agree that fees shall not be adjusted more frequently than once a year.

Notwithstanding the foregoing, CLIENT acknowledges that LABORATORY may develop and/or provide new technologies and/or new methodologies during the term of this Agreement. LABORATORY shall notify CLIENT when such technologies and/or methodologies are available and the fee associated with such technologies and/or methodologies. If, during the term of this Agreement, any nationally recognized professional medical association makes recommendations that establish or change a standard of care for testing, the parties will work in good faith to agree on an appropriate rate of payment for testing affected by the new or modified standard of care on a fee for service basis. If the parties cannot reach agreement, LABORATORY shall have the right to terminate this Agreement by giving thirty (30) days written notice to CLIENT.

#### **5. BILLING**

CLIENT shall indicate the entity responsible for payment of Services rendered on the requisition submitted to LABORATORY.

If CLIENT indicates that CLIENT is responsible for payment, LABORATORY will submit to CLIENT a monthly itemized statement of Services rendered to CLIENT by LABORATORY for the prior month. Payment for Services is due thirty (30) days after the date of invoice. Failure to remit payment within said time may result, among other remedies available to LABORATORY, in the loss or reduction of CLIENT's discount and/or special prices on future Services or discontinuation of Service. If, as a result of such non-payment, LABORATORY reduces or removes any discount and/or special prices, the terms and prices contained in LABORATORY's current Fee Schedule shall become the Fees payable by CLIENT. LABORATORY may, at its option, reinstate any discount and/or special prices after CLIENT brings its balance current. Nothing in the foregoing shall waive any rights or remedies available to LABORATORY with respect to late payment by CLIENT. If LABORATORY is compelled to bring suit to collect amounts due hereunder, it shall be entitled to recover interest on amounts due, reasonable attorneys' fees and costs incurred in connection with the action.

CLIENT is solely responsible for ensuring that it is in compliance with all federal, state and local laws, rules and regulations applicable to billing, specifically including but not limited to any state-specific restrictions on the mark-up and/or disclosure of laboratory services and direct billing requirements for laboratory testing.

If CLIENT indicates that a third party is responsible for payment, LABORATORY, in accordance with legal and regulatory requirements, agrees to bill the patient or other responsible party, including Medicare, Medicaid and insurance companies, for Services performed under this Agreement. CLIENT agrees to promptly provide LABORATORY with all necessary information to accomplish the billing and collection of amounts due, including required diagnosis information. If LABORATORY is unable to obtain payment from any third party due to CLIENT's failure to provide the information required by this Agreement, or as a result of CLIENT's failure to follow applicable rules or regulations, CLIENT agrees to pay LABORATORY for all such Services.

#### **6. ACCREDITATION OF TESTING SITES**

The Services performed hereunder shall be performed at testing facilities to be selected by LABORATORY. LABORATORY's facilities are and shall remain duly licensed clinical laboratories under applicable federal, state and local law. Reasonable documentation of such credentials shall be provided upon written request.

#### **7. PREVENTION OF FRAUD, WASTE AND ABUSE**

The terms of this Agreement are intended to be in compliance with all federal, state and local statutes, regulations and ordinances applicable on the date the Agreement takes effect including but not limited to, the Health Insurance Portability and Accountability Act of 1996, as amended, and its accompanying regulations

("HIPAA"), the Program Fraud Civil Remedies Act of 1986, the Deficit Reduction Act of 2005, the related Federal Civil False Claims Act and State False Claims Acts, and associated whistleblower protections. LABORATORY has written policies and procedures for detecting and preventing fraud, waste, and abuse and expects that test orders, services, supplies or materials provided to LABORATORY are in accordance with the requirements of the applicable federal and state laws.

## **8. CHANGE IN LAW OR REGULATION**

Should either party reasonably conclude that any portion of this Agreement is or may be in violation of such requirements or any other legal requirements or subsequent modifications by federal, state or local authorities, or if any such change or proposed change would materially alter the amount or method of compensating LABORATORY for Services performed for CLIENT or for any other party under this Agreement, or would materially increase the cost of LABORATORY's performance hereunder, the parties agree to negotiate written modifications to this Agreement as may be necessary to establish compliance with such authorities and/or to reflect applicable changes in compensation necessitated by such legal requirements.

## **9. NON-ASSIGNABILITY**

This Agreement may not be assigned by either party without the written consent of the other party which consent shall not be unreasonably withheld or delayed.

## **10. NOTICES**

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to LABORATORY at:

Laboratory Corporation of America Holdings  
6370 Wilcox Road  
Dublin, Ohio 43016  
Attention: Contracts Administrator

with a copy to:

Laboratory Corporation of America Holdings  
531 South Spring Street  
Burlington, North Carolina 27215  
Attention: Law Department

and to CLIENT at:

Mercer County Schools  
530 Perryville Road  
Harrisburg, Kentucky 40330  
Attention: \_\_\_\_\_

## **11. INDEPENDENT RELATIONSHIP**

None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between CLIENT and LABORATORY other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees shall be construed to be the agent, employer or representative of the other.

## **12. FORCE MAJEURE**

Neither LABORATORY nor CLIENT shall be liable for any failure or inability to perform their respective obligations under this Agreement due to any cause beyond the reasonable control of the non-performing party, including but not limited to acts of God, regulations or laws of any government or agency (including government or agency mandated restriction or redistribution of supplies and/or personal protective equipment ("PPE")), acts of war or terrorism, acts of civil or military authority, fires, floods, accidents, pandemics (including supply, PPE and labor shortages caused therefrom or as a result thereof), quarantine restrictions, unusually severe weather, explosions, earthquakes, strikes, labor disputes, loss or interruption of electrical power or other public utility, freight embargoes or delays in transportation, or any similar or dissimilar cause

beyond its reasonable control (collectively, a "Force Majeure Event"). If a party's non-performance under this section extends for fourteen (14) days or longer, the party affected by such non-performance may terminate this Agreement by providing written notice thereof to the other party.

### **13. WARRANTY**

- A. CLIENT WARRANTS TO LABORATORY THAT NEITHER CLIENT NOR ANY OF ITS EMPLOYEES OR OWNERS HAVE BEEN DEBARRED, SUSPENDED, DECLARED INELIGIBLE OR EXCLUDED FROM MEDICARE, MEDICAID, TRICARE OR ANY OTHER FEDERAL OR STATE GOVERNMENT PROGRAM.
- B. LABORATORY WARRANTS TO CLIENT THAT NEITHER LABORATORY NOR ANY OF ITS EMPLOYEES OR OWNERS HAVE BEEN DEBARRED, SUSPENDED, DECLARED INELIGIBLE OR EXCLUDED FROM MEDICARE, MEDICAID, TRICARE OR ANY OTHER FEDERAL OR STATE GOVERNMENT PROGRAM.
- C. LABORATORY WARRANTS TO CLIENT THAT ALL SERVICES PROVIDED HEREUNDER SHALL BE IN ACCORDANCE WITH ESTABLISHED AND RECOGNIZED CLINICAL LABORATORY TESTING PROCEDURES AND WITH REASONABLE CARE IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS.
- D. NO OTHER WARRANTIES ARE MADE BY LABORATORY.
- E. IN NO EVENT SHALL LABORATORY BE RESPONSIBLE FOR ANY PUNITIVE DAMAGES OR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES OF CLIENT OR OF ANY THIRD PARTY.

### **14. BENEFIT**

This Agreement is intended to inure only to the benefit of LABORATORY and CLIENT. This Agreement is not intended to create, nor shall be deemed or construed to create, any rights in any third parties.

### **15. NONDISCRIMINATION**

All Services provided by LABORATORY hereunder shall be in compliance with all applicable Federal and State laws, regulations and ordinances prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap, veteran status or any other protected class.

### **16. HEADINGS**

The headings in this Agreement are for convenience and reference only and are not intended to, and shall not, define or limit the scope of the provisions to which they relate.

### **17. ENFORCEABILITY/SEVERANCE CLAUSE**

The invalidity or unenforceability of any term or provisions of this Agreement in any jurisdiction shall not affect the validity or enforceability of any of the other terms or provisions in that jurisdiction or of the entire Agreement in any other jurisdiction. If any provision is held invalid by a court of competent jurisdiction, such shall be severed and the Agreement shall be interpreted as though the severed provision had not existed.

### **18. WAIVER**

No course of dealing between the parties or any delay on the part of either party in exercising any rights they may have under this Agreement shall operate as a waiver of any of the rights of the other party. No express waiver shall affect any condition, covenant, rule, regulation, right or remedy other than the one specified in such waiver and only for the time and in the manner specifically stated.

### **19. ACCESS TO BOOKS AND RECORDS**

If the Services to be provided by LABORATORY hereunder are subject to the disclosure requirements of 42 U.S.C. 1395x (v) (1) (I), LABORATORY shall until expiration of four (4) years make available, upon written request of the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, a copy of this Agreement and the books, documents and records of LABORATORY that are necessary to certify the nature and extent of the costs incurred under this Agreement through a subcontractor with a value or cost of \$10,000.00 or more over a twelve (12) month period. In addition, with respect to any applicable subcontract, such subcontract shall contain a clause to the effect that, should the subcontractor be deemed a related organization, until the expiration of four (4) years after the furnishing of services pursuant to such subcontract, the subcontractor shall make available upon written request

of the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, a copy of the subcontract, and the books, documents and records of such third party that are necessary to verify the nature and extent of the costs incurred under this Agreement.

During the term of this Agreement, upon reasonable prior written request and during normal business hours, LABORATORY shall allow CLIENT reasonable access to LABORATORY records concerning the Services provided hereunder. CLIENT warrants and represents that it has obtained any necessary written consent from CLIENT patients for the release of such records. Such consent shall satisfy all applicable laws and regulations including but not limited to the privacy regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

**20. USE OF NAME**

Neither party shall use the other's name, trademark, logos, or otherwise refer to the other in any press release, marketing materials, advertisements or other broadcast or communication of any kind without first obtaining that party's advance written consent. Any unauthorized use under this Section shall be considered a material breach of this Agreement.

**21. MODIFICATION**

This Agreement may only be modified in a writing signed by authorized representatives of each party.

**22. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties hereto concerning the subject matter herein and is a complete statement of the terms thereof and shall supersede all previous understandings between the parties, whether oral or written with respect to the subject matter herein. The parties shall not be bound by any representation made by either party or agent of either party that is not set forth in this Agreement. Any applicable provisions required by federal, state, or local law are hereby incorporated by reference.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their names as their official acts by their respective representatives, each of whom is duly authorized to execute the same.

LABORATORY:  
Laboratory Corporation of America Holdings

By: \_\_\_\_\_

Print Name: Sherry L. Thomas, Associate Vice President, Manager

Date: \_\_\_\_\_

CLIENT:  
Mercer County Schools

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **FEES**

For the Services ordered by CLIENT and performed by LABORATORY that are not set forth above, CLIENT agrees to pay the fees set forth in LABORATORY's current Professional Fee Schedule, as modified from time to time by LABORATORY. LABORATORY reserves the right to add any Service to the non-discountable list.