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**MEMORANDUM OF
UNDERSTANDING BETWEEN
THE VIRGIN ISLANDS DEPARTMENT OF HEALTH
AND
CLINICAL LABORATORY, INC.
THROUGH
THE VIRGIN ISLANDS DEPARTMENT OF PROPERTY AND
PROCUREMENT**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this 28th day of December 2020, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Health and Clinical Laboratory, Inc., each a "Party" or collectively "Parties," through the Department of Property and Procurement.

WITNESSETH:

Whereas, the Virgin Islands Department of Health is responsible for ensuring health care, during the COVID-19 Pandemic, to the residents of the Territory pursuant to Title 3, Chapter 23 and Title 19, Chapter 1, Part 1; and

Whereas, the Clinical Laboratory, Inc. is responsible for high quality clinical laboratory testing, focused on providing personalized services to small and mid-size medical practices, treatment providers, employers, criminal justice programs and health care providers; and

Whereas, the entities have a common interest in ensuring quality and efficient laboratory testing during the COVID-19 Pandemic; and

Whereas, the entities desire to combine efforts in ensuring that quality and efficient laboratory testing is available during the COVID-19 Pandemic, by entering into this MOU.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. TERM AND EFFECTIVE DATE

This MOU shall be effective upon the date of execution of this MOU by the Commissioner of the Department of Property and Procurement and shall terminate **one (1) year** thereafter. The Government in its sole discretion, shall have the option to renew this MOU for a period of one additional year subject to the same terms noted herein, by providing 30 days written notice of the Government's election to renew.

2. COSTS

There shall be no exchange of funds between the Parties for the performance of tasks under this MOU. Each Party shall bear all costs associated with the fulfillment of its responsibilities under this MOU.



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3. RESPONSIBILITIES/ TASKS

3.1 Department of Health shall be responsible for:

- (a) Providing COVID-19 tests and instruments if required
- (b) Providing weekly test supplies and swabs (quantity to be determined by the Department of Health based upon supply and usage). Test supplies may be restricted for those parties that are not compliant to responsibilities and/or tasks outlined here.
- (c) Determine and share priority testing groups with parties **Clinical Laboratory, Inc.**
- (d) Provide guidance to verify and prioritize persons for priority testing groups.
- (e) Training as requested
- (f) Share list of all data elements required for reporting with parties
- (g) Provide electronic web portal for parties to report patient demographics and test results
- (h) Provide confirmatory molecular testing for all antigen positive tests
- (i) Review of daily test reporting to ensure compliance and test prioritization. This will include, but not limited to: number of tests conducted; number of positive, negative and indeterminate tests; percentage of supplied tests utilized for priority testing groups.
- (j) Will promote:
 - Availability of priority group testing at specific testing locations.
 - Testing provided based upon supply availability and prioritization.
 - That priority groups request testing if they feel at risk of exposure. Particularly, those priority group persons over the age of 65, have disease co-morbidities, or may reside with a senior or persons with disease co-morbidities.
 - Testing will be provided at no cost for priority group employees, until the end of the year, but supplies remain limited. Testing for employers, which may require frequent testing or a large number of employees, are encouraged to develop employee testing programs and negotiate discounted rates with private laboratory providers.
 - Employers of priority groups are requested to contact testing centers and/or the Department of Health and provide a list of their employees that may require testing.

3.2 Clinical Laboratory, Inc. shall be responsible for:

- (a) Collect all requested patient and testing information. Electronically report results daily, using process specified by DOH, for all data elements requested.
- (b) Conduct testing of priority patient populations as described by the Department of Health
- (c) Conduct testing according to manufacturer instructions or off-label usage in compliance with FDA and Centers for Medicare & Medicaid Services (CMS) federal regulations
- (d) Ensure that at least 50% of the test supplies are used for priority groups.
- (e) Ensure that for each test conducted for a non-priority client at market price, not to exceed 50% of weekly test supplies provided by DOH, that a test is made available for a priority group at no cost.
- (f) Inform the DOH of employers/persons of priority groups if demand for free test supplies exceeds availability.

3.3 Other Provisions

- (a) All tests are being performed are under an Emergency Use Authorization



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- (b) Accuracy of test is based on manufacturer
- (c) Either party can terminate agreement provided notification
- (d) Testing supply allocations are expected through December 2020
- (e) Supplies will be provided based upon availability and adherence to MOU provisions
- (f) The DOH does not accept liability for the performance of the tests conducted according to manufacturer procedure and performance
- (g) All persons with a positive antigen test are to be referred to the DOH for confirmatory molecular testing
- (h) Laboratories may offer additional testing outside the scope of this MOU at market pricing; however, the test supplies provided under this MOU are to only be used according to the provisions described herein.

4. DESIGNATED REPRESENTATIVE

Department of Health designates:

Dr. Brett R Ellis PhD MSPH PHLD (ABB)
Director, Territorial Public Health Laboratory
Charles Harwood Medical Complex
3500 Estate Richmond
Christiansted, VI 00820-4370

Clinical Laboratory, Inc. designates:

Sean Coursey – Vice President
Sunny Isles Medical Center - Suite #6
Christiansted, St. Croix, U.S. Virgin Islands 00820
sean@stcroixlab.com
340-778-5369

5. LIABILITY OF OTHERS

Nothing in this MOU shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Clinical Laboratory, Inc. as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Clinical Laboratory, Inc. of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Clinical Laboratory, Inc., its servants, agents or independent contractors.

6. ASSIGNMENT

Neither Party shall subcontract or assign any part of the services or responsibilities under this MOU.

7. INDEMNIFICATION

Clinical Laboratory, Inc. agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or



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be subjected to, arising out of or in any way connected to the services to be performed under this MOU and arising from any cause, except the sole negligence of Government.

8. GOVERNING LAW

This MOU shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

9. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this MOU shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this MOU, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

10. ENTIRE AGREEMENT

This MOU constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This MOU supersedes all prior communications, MOUs, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

11. CONDITION PRECEDENT

This MOU shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

12. TERMINATION

Either party will have the right to terminate this MOU with or without cause on five (5) business days written notice to the other party specifying the date of termination.

13. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this MOU on account of race, creed, color, sex, religion, disability or national origin.

14. CONFLICT OF INTEREST

Both Parties covenant that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this MOU.

15. NOTICE

Any notice required to be given by the Terms of this MOU shall be deemed to have been given when the



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same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

Anthony D. Thomas, MBA
Commissioner
Department of Property and Procurement
8201 Subbase, Suite 4
St. Thomas Virgin Islands 00802

Justa E. Encarnacion, RN, BSN, MBA/HCM
Commissioner
Department of Health
1303 Hospital Ground – Suite 10
St. Thomas, VI 00802

Sean Coursey – Vice President
Clinical Laboratory, Inc.
Sunny Isles Medical Center - Suite #6
Christiansted, St. Croix, U.S. Virgin Islands 00820

16. INSURANCE: Clinical Laboratory, Inc. shall maintain the following insurance coverages during the term of this MOU

- a. **PROFESSIONAL LIABILITY:** Professional Liability in a form acceptable to the Government through insurance coverage or through coverage under the Government Self – Insurance Retention Program in 27 V.I.C. 166 et seq. This insurance policy shall cover the services being performed under this Contract and shall have policy limits of not less than two hundred fifty dollars (\$250,000.00) per claim if coverage is provided through the Government Self-Insurance Retention Program.

17. FASCIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

[SECTION INTENTIONALLY LEFT BLANK]



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IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES

GOVERNMENT OF THE VIRGIN ISLANDS

Denise A Dunlop-Harley

Justa E. Encarnacion
Justa E. Encarnacion, Commissioner
Department of Health

12/10/2020

Date

Magdalena A. Horne

Anthony D. Thomas
Anthony D. Thomas, Commissioner
Department of Property and Procurement

12/28/2020

Date

CLINICAL LABORATORY, INC.

Sean Coursey

Sean Coursey
Sean Coursey – Vice President
Clinical Laboratory, Inc.

12/09/2020

Date

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: Paul E. McDonald Date 12/28/2020
Assistant Attorney General