



PROFESSIONAL SERVICES AGREEMENT

_____ (hereinafter, the “Consultant”)

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made as of _____, 2020 (the “Effective Date”), by and between the New Jersey Emergency Medical Services Task Force Support Group, Inc. (the “Task Force” or “TF”), a New Jersey nonprofit corporation having a principal executive office at 107 Highland Avenue, Neptune, New Jersey 07753, and the Consultant set forth herein-above. The Task Force and the Consultant may be referred to herein singly as a “Party” and collectively, as the “Parties”.

Recitals

WHEREAS, on March 9, 2020, as part of the State of New Jersey’s coordinated response to address the novel coronavirus (“COVID-19”) outbreak, Governor Phil Murphy issued Executive Order No. 103 declaring a State of Emergency and a Public Health Emergency across all twenty-one counties of the State (the “COVID-19 Declaration”), which, among other things, authorized State agencies to take all appropriate steps to address the public health hazards of COVID-19, and waived certain procurement procedures to expedite the delivery of goods and services necessary for COVID-19 preparedness and response efforts; and

WHEREAS, on June ____, 2020, in furtherance of EO-103, the NJDOH executed a Letter of Intent with the New Jersey EMS Task Force for the provision of a *First Responder COVID-19 Mobile Testing Program* (the “NJDOH Program”) establishing two mobile testing teams who will, among other things: (i) coordinate with County OEM agencies to schedule First Responder Testing in their county (ii) handle all aspects of scheduling, deploying and staffing said mobile testing program, and (iii) coordinating with and reporting to NJDOH; and

WHEREAS, the State of New Jersey intends to utilize CARES Act funding to financial support this program; and

WHEREAS, the New Jersey EMS Task Force does not currently employ any staff and typically deploys individuals who are assigned to participate on the Task Force by Host Agencies who employ said individuals for short term emergent situations; and

WHEREAS, in accordance with the NJDOH Letter of Intent and the associated *Concept of Operations*, the Task Force has established the *First Responder COVID-19 Mobile Testing Program* (FRCMTP) which will be responsible for implementing the foregoing Letter of Intent and otherwise providing assistance to the NJDOH in its creation and management of a mobile testing capability in the State in furtherance of the COVID-19 Declaration and EO-103; and

WHEREAS, the Task Force will provide critical support to the NJDOH and other partners in managing the COVID-19 pandemic; and

WHEREAS, Task Force needs to augment its existing professional staff to fully support anticipated operational requirements of the FRCMTP; and

WHEREAS, in furtherance of the COVID-19 Declaration, the NJDOH Letter of Intent, the Task Force intends to engage professional service providers with requisite background and skills to assist the Task Force in the overall management, oversight and tactical operation (the “Services”) of the FRCMTP; and

WHEREAS, the Task Force is willing to engage individuals with requisite skills and experience, and desires to make such individuals available to provide the Services, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the terms, covenants and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending legally to be bound, do hereby agree as follows:

1. Scope of Services.

(a) The Services to be performed by Consultant pursuant to this Agreement are set forth on the Statement of Work (“SOW”), as amended and supplemented from time to time, and as may be appended hereto as Exhibit 1(a).

(b) The Consultant shall provide the Task Force with appropriate documentation or certification, as requested, to validate the qualifications and training of the individuals engaged by Consultant to provide the Services.

(c) Consultant shall perform its duties and obligations hereunder with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with industry custom and practice would use in the conduct of an enterprise of a like character and with like aims.

(d) The Consultant shall provide the Services in compliance with all applicable state, federal and local laws. The Consultant represents that they are experienced and expert in legally compliant delivery of the Services. The Task Force will be relying on the Consultant’s skill and probity in its engagement of individuals performing Services.

(e) The NJDOH shall have the right, in its sole discretion, to reject any individual proposed or provided by the Task Force hereunder.

2. Task Force Responsibilities. During the term of this Agreement, subject to the NJDOH’s policy and procedures, the Task Force shall provide the Consultant with access to Task Force facilities, equipment and systems to facilitate the Consultant’s performance of the Services under this Agreement. The Task Force and the Consultant shall have such other responsibilities as may be set forth and agreed to in the SOW.

3. Compensation and Payment.

(a) Fees and Payment. Fees for Services shall be as set forth in each SOW. In full consideration for the performance of the Services, the Task Force shall pay the Consultant the amount set forth in each SOW within thirty (30) days of the presentation of an undisputed invoice from the Consultant. Invoices shall be submitted for all work completed within the month and presented within ten (10) days of the end of the month.

(b) Disputed Invoices. If the Parties are unable to resolve a dispute with regard to an invoice within sixty (60) days after the Task Force’s receipt of such invoice, then the Consultant may, at any time thereafter, upon written request to the Task Force, have the dispute resolved through binding arbitration in the manner described in this Agreement. If the arbitrator determines that any amount is due from the Task Force to the Consultant, then the Task Force shall pay such amount to the Consultant within ten (10) days after such determination is made, together with interest thereon at the variable rate equal to the prime rate, with the prime rate being the prime rate as and when reported in the “Money Rates” section of the Wall Street Journal. The interest will be calculated on a daily basis, on a 365-day year, and it will begin to accrue from the sixty-first day after the Task Force’s receipt of the invoice that was the subject of the dispute.

(c) Fair Market Value. The Parties acknowledge and agree that the compensation set forth in this Agreement is intended to be consistent with fair market value in an arms-length transactions.

(d) Taxes. The Task Force has provided the Consultant with documentation of its tax exempt status under federal, state and local law. If, nonetheless the Task Force is determined to be responsible for any taxes that are levied by any taxing authority related to the Services, it shall pay such taxes, except for any taxes (i) on the Consultant's net income; (ii) employment-related taxes relating to the Consultant's employees and (iii) any other taxes that the Consultant is required by applicable law or regulation to pay.

(e) Expenses. The Task Force shall not be obliged to pay for or reimburse the Consultant for any the Consultant expenses, including expenses for travel, meals, or lodging, unless the obligation to do so is specifically described, and agreed to, in an SOW. Under no circumstances will the Task Force reimburse the Consultant for any expenses unless they are reasonable, documented with invoices necessary for the provision of the Services, and incurred in compliance with the Task Force's then current policy(ies) pertaining thereto.

(f) Survival. The terms of this Section 3 shall survive Termination.

4. Confidential Information.

(a) Confidentiality.

(i) Each Party ("Recipient") receiving Confidential Information (as hereinafter defined) of the other Party ("Disclosing Party") shall (A) not use any of such Confidential Information for any purpose other than as permitted or required for the performance of its obligations hereunder, (B) keep such Confidential Information strictly confidential, using steps no less rigorous than it uses to protect its own Confidential Information, and (C) not disclose to others the Disclosing Party's Confidential Information, including any results of the scientific evaluations, discussions and negotiations related to that Confidential Information, except that Recipient may disclose the Disclosing Party's Confidential Information to such of its trustees, directors, managers, officers, agents, employees and independent contractors (collectively, the "Representatives") who require access to such information for Recipient to perform its obligations under this Agreement and who are bound by confidentially, non-use and nondisclosure obligations substantially similar to, and in any event at least as protective as, those set forth in this Agreement. The Parties agree that the terms of this Section 4(a) shall be binding on their Representatives, and a Recipient shall be liable for breaches of this Agreement by its Representatives.

(ii) The Recipient's obligations of confidentiality and nonuse contained herein shall not apply to any of the Disclosing Party's Confidential Information that (A) is in the possession of Recipient prior to the Effective Date, as evidenced by written records maintained in the ordinary course of business; (B) is independently developed by or for Recipient without the use of any of the Disclosing Party's Confidential Information (as evidenced by written records maintained in the ordinary course of business); (C) is received without an obligation of nondisclosure, or after expiration of such obligation, by Recipient from a third party who has a lawful right to so disclose; (D) is currently in the public domain; (E) hereafter comes into the public domain through no breach of this Agreement by Recipient or its Representatives, or (F) is subject to disclosure under applicable government records laws of the State of New Jersey.

(iii) In the event a governmental entity or a court of law of competent jurisdiction requires either Party to disclose the existence of any Confidential Information, Recipient shall (A) promptly provide the Disclosing Party with written notice of such requirement, (B) furnish only that portion of the Confidential Information that the Recipient is legally required to furnish and (C) use commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. In the event any such disclosure is so required, the Recipient shall use its reasonable efforts to permit the Disclosing Party to seek a protective order or other appropriate remedy.

(iv) Upon Termination, if feasible, Recipient shall promptly return to the Disclosing Party all embodiments of such Disclosing Party's Confidential Information received from the Disclosing Party, and any copies thereof, or, if such return or destruction is not feasible, the Recipient shall extend the protections of this Section 4 to the Confidential Information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible.

(v) Confidential Information shall mean: (i) this Agreement, each SOW, and the terms hereof and thereof; (ii) all information marked as confidential or proprietary, or with a similar legend, by either Party; and (iii) any other information that is treated as confidential by the Disclosing Party and would reasonably be understood to be confidential, whether or not so marked (including, ideas, proposals and products, product combinations, market research data, patents, know-how and trade secrets, marketing strategies and plans, policies, capabilities, contracts (including third party vendors), rate information and other data relating to business intelligence, suppliers, personnel, any discussions related to this Agreement or a SOW, and any results, observations and/or evaluations of the foregoing).

(b) Survival. This Section 4 will survive Termination.

5. Term and Termination.

(a) Term.

This Agreement begins on the Effective Date and shall continue until June 30, 2020, unless specifically extended by the Task Force.

(b) Termination.

(i) For Cause. Either Party (the "Terminating Party") shall have the right to terminate this Agreement or any SOW immediately in the event of the breach by the other Party ("Defaulting Party") of any material covenant or warranty hereunder (with respect to a termination of this Agreement) or under a particular SOW (with respect to a termination of such SOW) (a "Breach"), and such Breach is not cured within five (5) days after written demand by the Terminating Party to the Defaulting Party that the Breach be cured. The Parties acknowledge that certain breaches, such as those involving fraud, crime, violations of law and breach of trust, are not capable of cure, and that each Party shall have the right to immediately terminate this Agreement upon the other Party's commission of such a breach, or if the other Party is excluded, debarred or suspended from any federal health care program.

(ii) Without Cause. Either Party shall have the right to terminate this Agreement without cause upon ten (10) days' notice.

(c) Effect of Termination. Termination of this Agreement shall terminate all SOWs under this Agreement. With the exception of provisions which, by their terms, are expressly made to survive Termination, upon Termination, neither Party shall have any further obligations to the other Party hereunder; provided, however, that Termination will not relieve either Party of any obligations which accrued hereunder prior to the date of such Termination and provided, further that Termination shall not relieve the Task Force of any obligation to the Consultant under this Agreement with respect to payment for the Services rendered prior to Termination.

6. Compliance.

(a) Laws and Regulations, Generally.

(i) Each Party shall comply in all material respects with all applicable laws and regulations related to the execution and carrying out of its responsibilities under this Agreement.

(ii) The Consultant represents and warrants that he or she has not been convicted of an offense related to health care or listed by a federal or state agency as being debarred, excluded, or otherwise ineligible for federal or state program participation. The Consultant agrees that it shall have a continuing obligation to promptly disclose to the Task Force whether Consultant or any individual engaged thereby name appears on any such exclusion lists.

(b) Health Care Fraud and Abuse Laws. Neither Party shall engage in any activities that are prohibited under 42 U.S.C. §§ 1320 7-a or 7-b, or 42 U.S.C. §1395nn (subject to the exceptions set forth in such provisions), or the regulations promulgated thereunder or pursuant to similar applicable state or local statutes or regulations.

7. Limitation of Liability. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE TO THE OTHER PARTY OR THEIR AFFILIATES FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF THE PERFORMANCE, ATTEMPTED PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT (OR PORTION THEREOF).**

8. Independent Contractors.

(a) None of the provisions of this Agreement are intended to create and none shall be deemed or construed to create, any relationship between the Consultant and the Task Force other than that of independent contractors. The Consultant and the Task Force are independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. This Agreement is not intended, and shall not be construed, to create a venture, partnership, association, trustee-beneficiary relationship, principal-agent relationship, or fiduciary relationship between the Parties.

(b) Each Party, at all times, shall be solely responsible for all salaries and other remuneration and the payment of all applicable federal, state or local withholding or similar taxes and the provision of workers' compensation and disability insurance for any person employed by it.

(c) Neither Party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other Party.

(d) If the Internal Revenue Service or any other governmental agency shall, at any time, question or challenge the independent contractor status of the Parties, then both Parties, upon receipt by either of them of notice from the Internal Revenue Service or any other governmental agency, shall promptly notify the other Party and afford the other Party the opportunity to participate in any discussion or negotiation with the Internal Revenue Service or other governmental agency, irrespective of how such discussions or negotiations are initiated.

(e) This Section 8 shall survive Termination.

9. Notices. Any notices to be given hereunder by either Party to the other shall be deemed to be received by the intended recipient (a) when delivered personally, (b) the first business day following delivery to a nationally recognized overnight courier service with proof of delivery, or (c) five (5) business days after mailing by certified mail, postage prepaid with return receipt requested, in each case addressed to the Parties at the following respective addresses or at any other address designated by a Party in writing, to the addresses first set forth herein-above to the attention of the authorized representatives executing this Agreement.

10. Dispute Resolution. If a dispute arises between the Parties concerning any right or obligation under this Agreement, then the Parties will confer, as soon as practicable, in an attempt to resolve the dispute amicably within a thirty (30) day period. If the Parties are unable to resolve the dispute amicably within such thirty (30) day

period, then, upon the written request of either Party, the Parties shall resolve their dispute through binding arbitration in Newark, New Jersey, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The expenses of any such arbitration shall be shared equally by the Parties. Nothing in this Section 102 shall prohibit a Party from seeking equitable relief in a court of competent jurisdiction in Essex County, New Jersey.

11. General Provisions.

(a) Entire Agreement. This Agreement and the Exhibits appended hereto and made a part hereof contain the entire agreement of the Parties with respect to the subject matter hereof and supersedes any other existing agreements, representations or promises exchanged by the Parties, whether verbal or written.

(b) Amendment; Waiver. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by both Parties, or in the case of a waiver, by the Party against whom the waiver is to be effective. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(c) Assignment. Except as otherwise provided herein, this Agreement may not be assigned by either Party except on the prior written consent of the other Party hereto; provided however, that either Party shall have the right, upon notice, to assign this Agreement to such Party's successor upon merger, consolidation or corporate reorganization of such Party or upon the sale of substantially all of such Party's assets.

(d) Governing Law; Jurisdiction. Except as otherwise provided in this Agreement, the execution, interpretation and performance of this Agreement shall be governed by the internal laws and judicial decisions of the State of New Jersey, without regard to conflict of laws principles that would cause the application of the law of another jurisdiction. The Parties each hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Essex County, New Jersey.

(e) Force Majeure. Neither Party will be responsible for any failure of or delay in the performance of any of its obligations under this Agreement that is caused by forces beyond the reasonable control of such Party, including fire, explosion, pandemic, natural disaster, war (whether declared or not), act of terrorism, strike, or riot, provided that the nonperforming Party uses reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed, and notifies the other Party of such cause as promptly as is reasonably practical given the circumstances. It is agreed that financial inability shall not be a matter beyond a Party's reasonable control.

(f) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective legal representatives, trustees, receivers, successors and permitted assigns.

(g) Further Action. Each Party agrees that it will execute and deliver such further instruments and will take such further action as may be necessary to discharge, perform or carry out any of its obligations and agreements hereunder.

(h) Severability; Modification to Comply with Law. If any provision of this Agreement or the application of any provision hereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Agreement and the application of such provision to other persons and circumstances shall not be affected unless the invalid provision substantially impairs the benefits of the remaining portion of this Agreement. In the case of such invalidity which substantially impairs the benefits of the Agreement, the Parties will endeavor in good faith to modify this Agreement so as to preserve the benefits of this Agreement in a manner which complies with applicable laws. If a modification of this Agreement is necessary to cause this Agreement to be in compliance with state or federal law, or the requirements of an accrediting or regulatory agency, or if there is a future change in Medicare, Medicaid or other federal or state statutes or regulations or in the interpretation thereof, which renders any

of the material terms of this Agreement unlawful or unenforceable, the parties agree they shall amend this Agreement to bring it into compliance with such statute, regulation, requirement or the interpretation thereof

(i) No Implied Rights or Remedies. Except as otherwise expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm, corporation or other entity, other than the Parties and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

(j) Interpretation. The terms and conditions of this Agreement shall govern any conflicting terms and conditions in the SOW. The terms and conditions of the BAA shall govern any conflicting terms and conditions of this Agreement.

(k) Execution in Counterparts. This Agreement may be executed electronically or otherwise in multiple counterparts, and so executed will constitute one agreement, binding on both Parties, even though both Parties are not signatories to the original or same counterpart. All such counterparts of this Agreement taken together will for all purposes be deemed a fully executed instrument. Signatures delivered by facsimile or PDF shall be as effective as original signatures.

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement as of the date first above written.

CONSULTANT:

NJ EMS TASK FORCE SUPPORT GROUP

By: _____

Name: Michael Bascom

Title: President

By: _____

Name: _____

Title: _____

Exhibit 1

Statement(s) of Work

Incident Commander- The Incident Commander (IC) has overall management responsibility for the incident and/or mission. All Section Chiefs will report directly to the IC, who will assess the overall progress and effectiveness of daily operations.

OPS Section Chief- The Operations Section Chief (OPS Section Chief) manages all operational components of the mission. Specifically, this individual will manage operational leads, including registration and specimen collection, at designated daily testing sites. The OPS Section Chief will work directly with the Planning Section Chief, and the Logistics Section Chief or their designee, to identify potential testing sites. This includes communicating with County OEM Coordinators regarding interest, site identification, and notification processes.

PLANS Section Chief- The Planning Section Chief (PLANS Section Chief) manages all aspects of the Planning Section, which covers the five mission areas: prevention, protection, mitigation, response and recovery. The PLANS Section Chief will oversee the Unit Leaders specific to this mission, including Scheduling, MACG and Documentation.

LOGS Section Chief- The Logistics Section Chief (LOGS Section Chief) manages logistical needs and provides facilities, services, people and materials in support of the mission. The LOGS Section Chief will play an instrumental role in managing equipment appropriation for testing sites, including testing materials, site required equipment (with assembly/disassembly) and transportation of testing swabs to the appropriate state site.

Site Manager- The Site Manager is responsible for managing daily activity at a chosen testing site. This individual will be a ranking member of the EMS Task Force on site and will work directly with the Section Chiefs to achieve operational success. The Site Manager will report directly to the Operations Section Chief and will liaison with the NJDOH Site Coordinator.

MACC Group Member- The Multi-Agency Coordination Center Group member (MACC Group) is responsible for the coordination of information and activity between operational sites. Information through the MACC will be disseminated in the form of daily Incident Action Plans (IAPs) and Situation Reports (SitReps) to appropriate parties, as determined by the Planning Section Chief. Additionally, this position is responsible for communication with the ESF 8 desk.

Schedule Unit Leader- The Schedule Unit Leader is responsible for scheduling appropriate personnel to staff each daily testing site. This position is responsible for maintaining a roster of all personnel and will communicate directly with interested parties. This position is responsible for providing all necessary records to the Time & Cost Unit Leader and to assure accuracy of said records.

PIO- The Public Information Officer (PIO) will be responsible for publicizing site locations, as well as registration instructions. This will be accomplished by utilizing social and mainstream media platforms. The PIO is also responsible for any press releases relative to the mission.

MedOps- Task Force Medical Operations personnel will be utilized to assist in administering the tests. Although the swabbing process is self-administered, these individuals will oversee the process and collect and log the samples, once completed. MedOps personnel will assist in site setup and demobilization each day.

Time & Cost Unit Leader – Reports to Finance Section Chief. Is responsible for collecting all records and recording personnel time. Is responsible for reviewing all costs and certifying same to the Finance Section Chief. Will prepare all necessary records to assure accuracy and timely payment of all costs. Will work with the Schedule Unit Leader to validate scheduled time vs. worked time.

Logs- Logistics personnel will function under the command of the LOGS Section Chief and will carry out all missions necessary for operational success. LOGS personnel will be assigned to lead the set up and demobilization of the site and will support site operations as needed throughout the day.

Documentation- Documentation personnel will function under the command of the Planning Section Chief and will be responsible for documenting everything pertinent to the mission, as determined by the Planning Section. DOCS personnel will be assigned to site registration and documentation handling. They will support setup and demobilization of their areas and other areas of the site as needed.

Technology – Technology personnel shall perform assignments similar to those performed by the Documentation staff, but will, in addition, be responsible for managing the computer and communications technology utilized to manage registration, LOGS and other assignments.

Exhibit -2

Compensation Rates

1. Consulting payments will be made within thirty (30) days of receipt of an accurate invoice and signed purchase order.

Monday - Friday Rates:		
Position	Hourly Rate	Estimated Hours Per Day
Incident Commander	\$50.00	Varies
NJDOH Site Coordinator	\$ -	10.00
Operations Section Chief	\$ -	10.00
Planning Section Chief	\$50.00	6.00
LOGS Section Chief	\$ -	10.00
Site Manager	\$50.00	10.00
MACC Group	\$40.00	8.00
Schedule Unit Leader	\$40.00	Varies
Nurse	\$ -	8.00
PIO	*\$100.00	Varies
DOCS	\$30.00	10.00
TECH	\$30.00	10.00
TIMES & COST Unit Ldr	\$40.00	Varies
MEDOPS	\$30.00	10.00

Saturday - Sunday Rates:		
Position	Rate	Estimated Hours Per Day
Incident Commander	\$50.00	Varies
NJDOH Site Coordinator	\$ -	10.00
Operations Section Chief	\$50.00	10.00
Planning Section Chief	\$50.00	6.00
LOGS Section Chief	\$50.00	10.00
Site Manager	\$50.00	10.00
MACC Group	\$40.00	8.00
Schedule Unit Leader	\$40.00	Varies
Nurse	\$ -	8.00
PIO	*\$ 100.00	Varies
DOCS	\$30.00	10.00
TECH	\$30.00	10.00
TIMES & COST Unit Ldr	\$40.00	Varies
MEDOPS	\$30.00	10.00

*- Daily Rate