

ADDENDUM 2

SERVICES CONTRACT

BETWEEN

THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

UNIVERSITY OF NEBRASKA BOARD OF REGENTS - NEBRASKA PUBLIC HEALTH LABORATORY

This services contract, including any addenda and attachments (collectively, "Contract") is entered into by and between the Nebraska Department of Health and Human Services, Division of Public Health Health Promotion, Infectious Disease, STD Prevention (hereinafter "DHHS"), and University of Nebraska Board of Regents - Nebraska Public Health Laboratory (hereinafter "Contractor").

DHHS CONTRACT MANAGER:

Tami Washam
PO Box 95026
301 Centennial Mall South
Lincoln, NE 68509-5026
402-471-6459
Tami.washam@nebraska.gov

PURPOSE: The purpose of this Contract is to provide and report laboratory testing related to the DHHS Sexually Transmitted Disease (STD) Prevention and Partner Services Program.

FUNDING: This Contract involves state and federal funds

HIPAA: This Contract involves the sharing of or access to Protected Health Information and includes a Business Associate Agreement for compliance with the Health Insurance Portability and Accountability Act (HIPAA).

1. DURATION

- 1.1. TERM. This Contract is in effect from September 20, 2019 through June 30, 2021.
- 1.2. TERMINATION. This Contract may be terminated at any time upon mutual written consent, or by either party for any reason upon submission of written notice to the other party at least thirty (30) days prior to the effective date of termination. In the event of termination under this section, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided. DHHS may also terminate the contract to the extent otherwise provided herein.

2. PAYMENT TERMS AND STRUCTURE

- 2.1. TOTAL PAYMENT. DHHS shall pay the Contractor a total amount not to exceed \$348,505 (three hundred, forty-eight thousand, five hundred and five dollars) for the services specified herein during the period September 20, 2019 to June 30, 2020.
 - 2.1.1. Of the amount specified in section 2.1, \$300,000 (three hundred thousand dollars) will be spent in accordance with Laws 2019, LB 294, Section 108.
 - 2.1.2. Of the amount specified in section 2.1, \$48,505 (forty-eight thousand, five hundred and five dollars) are from the FY 2018 block grant and must be spent by September 30, 2019.
 - 2.1.3. Funds for services conducted during the period July 1, 2020 to June 30, 2021 are to be mutually agreed upon at a later date in accordance with and subject to Laws 2019, LB 294, Section 108 or any applicable legislative appropriation.
- 2.2. PAYMENT STRUCTURE. Payment shall be structured as follows.

- 2.2.1. The Contractor shall bill DHHS on a monthly basis an interagency billing transaction (IBT) for reimbursement of costs incurred for STD tests done at a cost per test as set out in Attachment 1.

3. SCOPE OF WORK

3.1. THE CONTRACTOR shall do the following:

- 3.1.1. Provide medically related laboratory services at a per test cost as outlined in Attachment 1 and incorporated into this contract by reference.
- 3.1.1.1. Utilize only testing permitted and limited to:
- 3.1.1.1.1. Syphilis IgG EIA Screen;
 - 3.1.1.1.2. RPR Confirmation FTA;
 - 3.1.1.1.3. GC Culture;
 - 3.1.1.1.4. RPR Screen;
 - 3.1.1.1.5. RPR Quantitative; and
 - 3.1.1.1.6. GC/Chlamydia Amplified (Swab and Urine).
- No other testing is permitted without the written permission of the DHHS. All necessary test supplies and U.S. Mail shipping of specimens and test supplies shall be included in the total cost outlined in Attachment 1.
- 3.1.2. Perform reflex testing (automatic confirmatory testing) on specimens submitted for syphilis screening.
- 3.1.2.1. Reflex testing will only be performed according to the mutually agreed upon protocol and Centers for Disease Control (CDC) recommendations when indicated by a screening test or as requested by DHHS via email notification.
- 3.1.2.2. The number of approved reflex tests must be performed within the dollar limit set in this scope of services.
- 3.1.3. Perform laboratory analyses on all samples submitted for tests listed on Attachment 1 and to make available the necessary sample kits to medical providers.
- 3.1.4. Provide laboratory results of the testing performed to the medical services provider and DHHS.
- 3.1.5. Provide information on STD reportable diseases to DHHS as required by Title 173, Chapter 1 of the Nebraska Administrative Code. The Contractor agrees to provide information on STD reportable diseases to CDC as required by state regulations and guidelines.
- 3.1.6. Provide DHHS with a monthly accounting of tests performed under this contract.
- 3.1.7. Maintain and/or utilize laboratories fully accredited by the College of American Pathologists that meet all appropriate standards for laboratories performing medical laboratory testing. The Contractor agrees that all laboratory services will meet standards of certification under the federal Clinical Laboratory Improvement Act, all amendments thereto, and the regulations adopted hereunder.
- 3.1.8. Notify DHHS of any major laboratory changes or events within five (5) working days of discovery. Major laboratory changes or events include the loss or replacement of the laboratory director or any situation that affects the Contractor's ability to meet the provisions of this contract.
- 3.1.9. Notify DHHS within two (2) working days of discovery of any analytic results that indicate a problem with a sample; or sample collection; or processing; or any event or concern that would delay or affect the reporting of results.
- 3.1.10. Periodically, the Laboratory Director and requested staff will meet with DHHS.
- 3.1.11. At the request of DHHS, meet with various groups to discuss laboratory operations services or other related topics as appropriate. The meetings shall include the Contractor's Director of Clinical Laboratories or other appropriate personnel.
- 3.2. DHHS shall do the following:
- 3.2.1. Determine the release and disposition of information to the public as a result of testing under this contract.

4. ADDENDA

- A. DHHS General Terms – University of Nebraska Contracts
- B. University of Nebraska Statement of Self-Insurance – University of Nebraska Contracts
- C. DHHS HIPAA Business Associate Agreement Provisions – Services Contracts

5. ATTACHMENTS

- 1. Per test cost

6. NOTICES

Notices shall be in writing and shall be effective upon mailing. All deliverables and required reports under this Contract shall be sent to the DHHS Contract Manager. Written notices, such as notices of termination or notice of breach, shall be sent to the DHHS Contract Manager identified above, and to the following addresses:

FOR DHHS:

Contract Administrator
Nebraska Department of Health and Human Services
301 Centennial Mall South
Lincoln, NE 68509-5026

FOR CONTRACTOR:


William M. Lawlor
Assistant Vice Chancellor for Business &
Financial Services
University of Nebraska Medical Center
985070 Nebraska Medical Center
Omaha, NE 68198-5070

WLawlor@unmc.edu

DHHS may change the DHHS Contract Manager to be notified under this section via letter to the Contractor sent by U.S. Mail, postage prepaid, or via email.

IN WITNESS THEREOF, the parties have duly executed this Contract hereto, and that the individual signing below has authority to legally bind the party to this contract.

FOR DHHS:

DocuSigned by:

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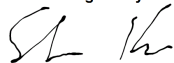
Gary Anthone

GaryMD

Department of Health and Human Services
Division of Public Health

DATE: 9/27/2019 | 06:40:46 CDT


FOR CONTRACTOR:

DocuSigned by:

6223D62157DD440...

Steve D. Kuss, MBA
Administrator, Pathology and Microbiology
University of Nebraska Medical Center

DATE: 9/23/2019 | 11:48:16 CDT


FOR CONTRACTOR:

DocuSigned by:

2293C1C9CCE9443...

Peter C. Iwen, PhD (ABMM)
Director, Nebraska Public Health Lab
University of Nebraska Medical Center

DATE: 9/23/2019 | 10:16:05 CDT

FOR CONTRACTOR:

DocuSigned by:

DC67ADCB9A1F4B5...

William Lawlor
Assistant Vice Chancellor for Business &
Financial Services
University of Nebraska Medical Center

DATE: 9/23/2019 | 14:40:13 CDT

ATTACHMENT 1
NPHL/DHHS FEE SCHEDULE

Nebraska Medicine	STD	FTA	\$ 26.16	FTA-ABS	Fluorescent Treponemal Antibody
Nebraska Medicine	STD	GCSCR	\$ 10.50	GC Screen	Gonorrhea Culture, Jembec Plate
Nebraska Medicine	STD	RPR	\$ 7.20	RPR	RPR Screen
Nebraska Medicine	STD	RPRQ	\$ 15.20	RPR Quantitative	RPR Quantitative
Nebraska Medicine	STD	STDSW	\$ 14.50	CL/GC DNA Detection	GenProbe CT/GC Amplified DNA Detection
Nebraska Medicine	STD	SYPIGG	\$ 7.20	Syphilis IGG	Syphilis IgG EIA Screen

ADDENDUM A

DHHS GENERAL TERMS – UNIVERSITY OF NEBRASKA CONTRACTS

Throughout this addendum, all references to “University” shall refer to the same party termed as “Contractor” in the services contract.

1. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES. All University books, records, and documents relating to work performed or monies received under the Contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by DHHS. These records shall be maintained for a period of three (3) years; provided however, records that fall under the provisions of HIPAA and all associated rules and regulations shall be maintained for six (6) full years, from the date of final payment, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles. In addition to, and in no way in limitation of any obligation in this Contract, the University shall agree that it will be held liable for audit exceptions, and shall return to DHHS all payments made under this Contract for which an exception has been taken or which has been disallowed because of such an exception. The University agrees to correct immediately any material weakness or condition reported to DHHS in the course of an audit.
2. AMENDMENT. This Contract may be modified only by written amendment, executed by both parties. No alteration or variation of the terms and conditions of this Contract shall be valid unless made in writing and signed by the parties.
3. ASSIGNMENT. The University shall not assign or transfer any interest, rights, or duties under this Contract without prior written consent of DHHS. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this Contract. DHHS shall provide reasonable notice to University should it assign this Agreement to another party.
4. AVAILABILITY OF FUNDING. Due to possible future reductions in State and/or Federal appropriations, DHHS cannot guarantee the continued availability of funding for this Contract. In the event funds to finance this Contract become unavailable either in full or in part due to such reductions in appropriations, DHHS may terminate the Contract or reduce the consideration upon thirty (30) days prior notice in writing to the University. DHHS shall be the final authority as to the availability of funds. The effective date of such Contract termination or reduction in consideration shall be specified in the notice as the date of service of said notice or the actual effective date of the funding reduction, whichever is later. Reductions shall not apply to payments made for services satisfactorily completed and all non-cancelable commitments incurred prior to the said effective date. In the event of a reduction in consideration, the University may terminate this Contract as of the effective date of the proposed reduction upon the provision of advance written notice to DHHS.
5. CLEAN AIR ACT. If this Contract involves federal funds and the total value exceeds \$150,000, the University shall ensure that it in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act as amended, 33 U.S.C. §§ 1251 et seq.
6. CONFIDENTIALITY. Any and all information gathered in the performance of this Contract, either independently or through DHHS, shall be held in the strictest confidence and shall be released to no one other than DHHS without the prior written authorization of DHHS, provided, however, that contrary contract provisions set forth in the contract shall be deemed to be authorized exceptions to this general confidentiality provision.
7. CONFLICTS OF INTEREST. In the performance of this Contract, the University agrees to avoid all conflicts of interest and all appearances of conflicts of interest; the University will notify DHHS of any such instances encountered in the course of its work that other arrangements can be made to complete

the work. The University further agrees to abide by University of Nebraska Board of Regents Bylaws 3.4.5 and 3.8 and Board of Regents Policy 3.2.8 on Conflict of Interest.

8. CORRECTIVE ACTION PLAN AND BREACH OF CONTRACT.

8.1. *Corrective Action Plan.* If the University fails to meet the Scope of Work as set forth in the Contract, DHHS may require the University to complete a Corrective Action Plan (hereinafter "CAP").

8.1.1. DHHS shall set a deadline for the CAP to be provided to DHHS, but shall provide University reasonable notice of said deadline. In its notice, DHHS shall identify each issue to be resolved.

8.1.2. The CAP will include, but is not limited to, a written response noting the steps being taken by the University to resolve each issue(s), including a date that the issue(s) will be resolved.

8.1.3. If the University fails to provide a CAP by the deadline set by DHHS, fails to provide DHHS with a CAP demonstrating the issues regarding performance will be remedied, or fails to meet the deadline(s) set in the CAP for resolution of the issue(s), DHHS may choose to consider such failure to be a breach of the Contract, or choose to exercise any other remedy available set forth in this Contract or under law.

8.2. *Breach of Contract.* Should either party breach this Contract, the non-breaching party may, at its discretion, exercised in good faith, suspend performance under this Contract immediately upon written notice to the breaching party. Should the non-breaching party exercise its right to suspend performance as set forth herein, the breaching party shall be afforded a reasonable opportunity, not to exceed 30 days, to cure or otherwise resolve the breach. If the breaching party does not cure the breach within the timeframe specified by the non-breaching party, the non-breaching party may terminate the Contract immediately. In the event DHHS suspends performance or terminates this Contract, DHHS shall pay the University only for such performance as has been properly completed prior to notice of suspension or termination.

8.2.1. In the event DHHS terminates this Contract, the University shall provide to DHHS all work in progress, work completed, and materials provided to it by DHHS in connection with this Contract immediately. This provision shall not preclude the pursuit of other remedies for breach of Contract allowed by law.

8.2.2. The waiver by either party of a breach of this Contract by the other party shall not operate or be construed as a waiver of any subsequent breach. No waiver shall be valid unless in writing and signed by the party.

9. DATA OWNERSHIP AND COPYRIGHT.

9.1. *Data.* All data collected as a result of this project shall be the property of DHHS.

9.1.1. If this Contract involves federal funds, the federal funding agency reserves the right to obtain, reproduce, publish, or otherwise use the data produced under this Contract, and to authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

9.1.2. The University will have the right to submit a written request for release of data of relevance to academic publications or other research conducted by the University, and DHHS will make a written response to such request. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this agreement.

9.1.3. When the services performed under this Contract are complete, or DHHS has made the information available to the public, the University will no longer be obligated to obtain DHHS authorization, pursuant to subsection 1 of this provision, for use of the data developed in conjunction with this Contract. Notwithstanding the foregoing, the University may not release any data or information that has been identified by DHHS as being, or that the University is otherwise aware is, subject to provisions governing disclosure under federal or state law, including, but not limited to HIPAA and Neb. Rev. Stat. § 84-712.05, unless the University has prior written authorization from DHHS. This provision shall survive termination of this Contract.

- 9.2. *Copyright.* The University may copyright any of the copyrightable material produced in conjunction with the performance required under this agreement. DHHS and the appropriate federal funding agency hereby reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for State or Federal Government purposes.
- 9.3. *Patent Rights.* As consistent with 37 C.F.R. § 401.14 and the clause contained therein, DHHS agrees that all inventions or discoveries of any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof, produced by the University based upon said data shall be the property of the University.
10. **DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE.** The University certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state or federal department or agency.
11. **DOCUMENTS INCORPORATED BY REFERENCE.** All references in this Contract to laws, rules, regulations, guidelines, directives, addenda and attachments that set forth standards and procedures to be followed by the University in discharging its obligations under this Contract shall be deemed incorporated by reference and made a part of this Contract with the same force and effect as if set forth in full text herein.
12. **DRUG-FREE WORKPLACE.** University certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. University shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.
13. **EARLY TERMINATION.**
- 13.1. DHHS may terminate the Contract immediately for the following reasons:
- 13.1.1. If directed to do so by statute;
- 13.1.2. Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Contract by the University, its employees or officers;
- 13.1.3. University intentionally discloses Confidential Information; or
- 13.1.4. University has or announces it will discontinue support of the deliverable.
- 13.2. DHHS and the University may also terminate this Contract in accord with any other provision of this Contract, as expressly stated in that provision.
- 13.3. In the event either party terminates this Contract for any reason, the University shall provide to DHHS all work in progress, work completed, and materials provided to it by DHHS in connection with this Contract immediately.
14. **FEDERAL FINANCIAL ASSISTANCE.** If this Contract involves federal funds, the University will comply with all applicable provisions of 45 C.F.R. §§ 87.1-87.2. The University shall not use direct federal financial assistance to engage in inherently religious activities, such as worship, religious instruction, and/or proselytization.
15. **FEDERAL FUNDING AGENCY APPROVAL.** If this Contract involves federal funds, and requires pre-approval by the federal funding agency, said approval is a condition precedent to this Contract and absent said approval, the Contract shall be considered void and unenforceable.
16. **FORCE MAJEURE.** Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this Contract due to a natural disaster, or other unforeseeable event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of this Contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this Contract that are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a "Force Majeure Event" and will not suspend performance requirements under this Contract.

17. FUNDING AVAILABILITY. DHHS may terminate the Contract, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the Contract with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give the University written notice thirty (30) days prior to the effective date of any termination. The University shall be entitled to receive just and equitable compensation for any authorized work that has been satisfactorily performed or provided as of the termination date and for all non-cancelable commitments incurred prior to said termination date. In no event shall the University be paid for a loss of anticipated profit.
18. GOVERNING LAW.
- 18.1. The Contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against DHHS or the State of Nebraska regarding this Contract shall be brought in Nebraska administrative or judicial forums as defined by Nebraska State law.
- 18.2. The parties shall comply with all applicable federal, state, and local law in the performance of this Contract. Legal obligations required hereunder include, but are not limited to: all applicable confidentiality and privacy statutes and regulations, current and as amended, including but not limited to HIPAA.
19. HOLD HARMLESS. Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.
20. INDEPENDENT AGENCIES. The University and DHHS are separate State agencies within the State of Nebraska. As an independent agency, the University shall employ and direct such personnel as it requires to perform its obligations under this Contract, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this Contract.
21. INTEGRATION. This written Contract, along with Addenda and attachments, represents the entire Contract between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, which are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Contract.
22. INVOICES AND PAYMENT.
- 22.1. *Invoices*. Invoices for payments submitted by the University shall contain sufficient detail to support payment. Any terms and conditions included in the University's invoice shall be deemed to be solely for the convenience of the parties. No payment shall be made for any deliverable or cost unless specifically authorized in the terms of the Contract.
- 22.2. *Prompt Payment*. As applicable, payment shall be made in compliance with the Nebraska Prompt Payment Act, Neb. Rev. Stat. §§ 81-2401 et seq. Unless otherwise provided herein, payment shall be made by electronic means.
- 22.3. *Interagency Billing Transaction*. Payment may be made by Interagency Billing Transaction.
23. LOBBYING.
- 23.1. As set forth in 45 CFR § 93 et seq.:
- 23.1.1. No federal appropriated funds shall be paid, by or on behalf of the University, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract or (a) the awarding of any federal agreement; (b) the making of any Federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 23.1.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, the University shall complete and submit

Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

23.2. If this Contract involves federal funds, and if the below is consistent with applicable law and the terms and conditions of the applicable federal funding source of the contract:

23.2.1. No funds under this Contract shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation of the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

23.2.2. No funds under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than normal and recognized executive legislative relationships or participation by an agency or officer of an State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

23.2.3. The prohibitions in the two sections immediately above shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

24. NEBRASKA TECHNOLOGY ACCESS STANDARDS. The University agrees to ensure compliance with current Nebraska Access Technology Standards. The intent is to ensure that all newly procured information technology equipment; software and services can accommodate individuals with disabilities. Information technology products, systems, and services including data, voice, and video technologies, as well as information dissemination methods will comply with the Nebraska Technology Access Standards. A complete listing of these standards can be found at website <http://www.nitc.nebraska.gov/standards/>.

25. NEW EMPLOYEE WORK ELIGIBILITY STATUS. The University shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

25.1. If the University subcontracts to an individual or sole proprietorship, the following applies:

25.1.1. The University or the subcontractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

25.1.2. If an individual indicates on such attestation form that he or she is a qualified alien, the University and subcontractor agree to provide the U.S. Citizenship and Immigration Services documentation required to verify the subcontractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

25.1.3. The University and subcontractor understands and agrees that lawful presence in the United States is required and the University and the subcontractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

26. NON-DISCRIMINATION. The parties agree to comply fully with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.; the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq.; the Americans

With Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.; the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq.; and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125. The parties shall not discriminate against any employee who is employed in the performance of this Contract, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex or marital status. This provision shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The parties agree that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the party. The University further agrees to insert similar provisions in all sub-contracts for services allowed under this Contract under any program or activity.

27. ORDER OF PREFERENCE.

27.1. Unless otherwise specifically stated in a Contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference:

1. Amendments to the Contract with the most recently dated amendment having the highest priority;
2. The Contract, excluding attachments, with the following Addenda in order of preference: DHHS General Terms – University of Nebraska Contracts; DHHS HIPAA Business Associate Agreement (if included); University of Nebraska Statement of Self-Insurance; any other attachments.

27.2. These documents constitute the entirety of the Contract. Any ambiguity or conflict in the Contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

28. PUBLIC COUNSEL. In the event University provides health and human services to individuals on behalf of DHHS under the terms of this Contract, University shall submit to the jurisdiction of the Public Counsel under Neb. Rev. Stat. §§ 81-8,240 through 81-8,254 with respect to the provision of services under this Contract. This provision shall not apply to contracts between DHHS and long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 73-401 et seq.

29. SEVERABILITY. If any term or condition of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

30. SUBCONTRACTORS. The University shall not subcontract any portion of this Contract without notice to DHHS. DHHS reserves the right to reject a subcontractor; such rejection shall not be arbitrary or capricious. . If the University subcontracts a portion of the work involved in this Contract and has obtained approval for such subcontracting, it shall ensure that the subcontractor complies with all workers' compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this Contract.

31. SURVIVAL. All provisions hereof that by their nature are to be performed or complied with following the expiration or termination of this Contract, including but not limited to the obligations in the Confidentiality section, above, shall survive the expiration or termination of this Contract.

32. TAXPAYER TRANSPARENCY ACT. Pursuant to Neb. Rev. Stat. § 84-602.04, all state contracts including, at least in part, state funds, and that are in effect as of January 1, 2014, shall be posted on a public website. All non-proprietary and non-confidential information as defined by law will be posted for public viewing.

ADDENDUM B

UNIVERSITY OF NEBRASKA STATEMENT OF SELF-INSURANCE

Throughout this addendum, all references to “University” shall refer to the same party termed as “Contractor” in the attached contract.

As of the date of the execution of this contract, the University is self-insured pursuant to the University of Nebraska Self-Insurance Trust Program (“Program”). Subject to the terms, conditions, exclusions, and limits of the Statement of Self-Insurance Coverage contained in the Program, the Program shall pay on behalf of the University during any of its fiscal years all sums for which the University shall become legally obligated to pay as damages for liability occurrences, up to the limits of \$1,000,000 per liability occurrence and \$3,000,000 in the aggregate of liability occurrences in any fiscal year. The University shall provide DHHS with a copy of the University of Nebraska Self-Insurance Trust Fund Program Statement evidencing such coverage, upon request.

Personal property insurance shall be the responsibility of the owner of the property regardless of the location of the loss.

ADDENDUM C

DHHS HIPAA BUSINESS ASSOCIATE AGREEMENT PROVISIONS SERVICES CONTRACTS

1. **BUSINESS ASSOCIATE.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party in this contract, shall mean Contractor.
2. **COVERED ENTITY.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this contract, shall mean DHHS.
3. **HIPAA RULES.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
4. **OTHER TERMS.** The following terms shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
5. **THE CONTRACTOR** shall do the following:
 - 5.1. Not use or disclose Protected Health Information other than as permitted or required by this contract or as required by law. Contractor may use Protected Health Information for the purposes of managing its internal business processes relating to its functions and performance under this contract. Use or disclosure must be consistent with DHHS’ minimum necessary policies and procedures.
 - 5.2. Implement and maintain appropriate administrative, physical, and technical safeguards to prevent access to and the unauthorized use and disclosure of Protected Health Information. Comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for in this contract and assess potential risks and vulnerabilities to the individual health data in its care and custody and develop, implement, and maintain reasonable security measures.
 - 5.3. To the extent Contractor is to carry out one or more of the DHHS’ obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to DHHS in the performance of such obligations. Contractor may not use or disclosure Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by DHHS.
 - 5.4. In accordance with 45 CFR §§ 164.502(E)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agents and subcontractors that create, receive, maintain, or transmit Protected Health Information received from DHHS, or created by or received from the Contractor on behalf of DHHS, agree in writing to the same restrictions, conditions, and requirements relating to the confidentiality, care, custody, and minimum use of Protected Health Information that apply to the Contractor with respect to such information.
 - 5.5. Obtain reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
 - 5.6. Within fifteen (15) days:
 - 5.6.1. Make available Protected Health Information to DHHS as necessary to satisfy DHHS’ obligations under 45 CFR § 164.524;
 - 5.6.2. Make any amendment(s) to Protected Health Information as directed or agreed to by DHHS pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy DHHS’ obligations under 45 CFR § 164.526;
 - 5.6.3. Maintain and make available the information required to provide an accounting of disclosures to DHHS as necessary to satisfy DHHS’ obligations under 45 CFR § 164.528.
 - 5.7. Make its internal practices, books, and records relating to the use and disclosure of Protected

Health Information received from, or created or received by the Contractor on behalf of the DHHS available to the Secretary for purposes of determining compliance with the HIPAA rules. Contractor shall provide DHHS with copies of the information it has made available to the Secretary.

- 5.8. Report to DHHS within fifteen (15) days, any unauthorized use or disclosure of Protected Health Information made in violation of this contract, or the HIPAA rules, including any security incident that may put electronic Protected Health Information at risk. Contractor shall, as instructed by DHHS, take immediate steps to mitigate any harmful effect of such unauthorized disclosure of Protected Health Information pursuant to the conditions of this contract through the preparation and completion of a written Corrective Action Plan subject to the review and approval by DHHS. The Contractor shall report any breach to the individuals affected and to the Secretary as required by the HIPAA rules.

6. TERMINATION.

- 6.1. DHHS may immediately terminate this contract and any and all associated contracts if DHHS determines that the Contractor has violated a material term of this contract.
- 6.2. Within thirty (30) days of expiration or termination of this contract, or as agreed, unless Contractor requests and DHHS authorizes a longer period of time, Contractor shall return or at the written direction of DHHS destroy all Protected Health Information received from DHHS (or created or received by Contractor on behalf of DHHS) that Contractor still maintains in any form and retain no copies of such Protected Health Information. Contractor shall provide a written certification to DHHS that all such Protected Health Information has been returned or destroyed (if so instructed), whichever is deemed appropriate. If such return or destruction is determined by the DHHS to be infeasible, Contractor shall use such Protected Health Information only for purposes that makes such return or destruction infeasible and the provisions of this contract shall survive with respect to such Protected Health Information.
- 6.3. The obligations of the Contractor under the Termination Section shall survive the termination of this contract.