

**LABORATORY SERVICES AGREEMENT**  
Agreement No. [XXXXX]

National Medical Services, Inc. d/b/a NMS Labs ("NMS Labs") located at 200 Welsh Road, Horsham, PA 19044, agrees to provide laboratory testing and related services for the County of Summit ("Client") located at 175 South Main St., 8<sup>th</sup> Fl., Akron OH 44308, pursuant to the terms and conditions of this Agreement.

**I. SERVICES PROVIDED**

- a. Laboratory testing and services covered by this Agreement are as described in Exhibit A & B.
- b. In the event that Client requires a change to the nature, scope, or delivery of agreed upon services, Client shall provide a request to NMS Labs in writing. NMS Labs will provide an estimate of work required and associated costs to meet the request. Any changes to this Agreement shall be agreed to in writing by both parties and an Amendment to this Agreement shall be executed.

**II. PERIOD OF PERFORMANCE**

The Effective Date of this Agreement is **start date** and will apply to commitments made by NMS Labs as outlined in Exhibits A and B from **February 1, 2023**, and ending on the Completion Date of **December 31, 2023**, unless terminated pursuant to the terms of this agreement or extended by mutual written agreement of the parties.

**III. COMPENSATION**

NMS Labs will bill Client for services performed in accordance with this agreement as outlined in Exhibit A and B.

**IV. USE OF SUBCONTRACTORS**

- a. NMS Labs may utilize independent or third-party contractors or subcontractors to perform all or any part of its obligations under this Agreement.
- b. NMS Labs may be required to release certain patient information to said contractors. NMS will use reasonable commercial efforts to protect health information (as that term is defined in the Privacy Regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"))

**V. USE OF NMS NETWORK LABS**

Under the terms of this agreement, NMS Labs is authorized by the Client to utilize one of its ANSI National Accreditation Board (ANAB) and/or *International ISO17025* accredited network laboratories to perform all or part of the work performed under this agreement.

**VI. CLIENT RESPONSIBILITIES**

- a. Client's personnel shall cooperate with NMS Labs personnel, providing assistance and information as needed, to ensure testing services can be completed in accordance with this Agreement.
- b. Client shall adhere to the sample requirements set forth by NMS Labs located at: <http://www.nmslabs.com/sample-submission/>.
- c. In the event Client submits samples to NMS Labs that do not adhere to NMS Labs' sample submission requirements, NMS Labs will proceed with the following action:
  - 1) Provide notice to Client that testing cannot be performed on the samples provided by Client and;

The Information Contained in this Document is the Intellectual Property of NMS Labs and is Privileged and Confidential

2) Stop all work under the current Agreement until Client takes action to terminate or amend the current Agreement

Client will be responsible for reimbursing NMS Labs for all costs incurred in the performance of this Agreement as outlined in Exhibit A & B.

## VII. PRIOR AGREEMENTS

This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and supersedes all prior understandings, arrangements, and agreements, oral or written, relating to the services provided herein.

## VIII. TERMINATION

This Agreement may be terminated by either party at any time for any reason with **[thirty (30) or ninety (90) for HUB agreements only]** days prior written notice. If the Client should terminate the agreement prior to the end date, the Client shall reimburse NMS Labs for all costs under this agreement, not previously paid, for the performance of this contract before the effective date of the termination. The Client shall also reimburse NMS Labs for those costs that may continue for a reasonable time after the termination date with the approval of or as directed by the Client. NMS Labs shall discontinue these costs as rapidly as practical.

## IX. PAYMENT

- a. Payment is due to NMS Labs 45 days from invoice date. Invoices are provided on a monthly basis and capture billing for services completed and rendered in that calendar month.
- b. NMS Labs reserves the right to charge a finance charge on any past due balance at either one percent (1 %) per month or the maximum rate that the law permits, whichever is less.
- c. NMS Labs will collect from Client all applicable federal, state, local and other taxes and other amounts as required by law, rule or regulation.
- d. All invoices will be rendered by NMS Labs in United States dollars and all payments to NMS Labs are to be made in United States dollars.

## X. LEGISLATIVE AND REGULATORY CHANGES

NMS Labs reserves the right to immediately amend this Agreement to comply with any changes to federal or state laws or regulations in order to comply with said changes.

## XI. COMPLIANCE WITH LAWS

NMS, its employees, and personnel shall comply with all applicable statutes, ordinances, rules, regulations, and other similar requirements pertaining to the profession(s) of their employees and to the Services provided under this Agreement. NMS will use reasonable commercial efforts to perform the services provided hereunder in compliance with all applicable local, state, and federal licensing, certification and accreditation standards and requirements including any applicable standards for laboratories participating in the Medicare and state Medicaid programs.

## XII. CONFIDENTIALITY

Each party shall hold all Confidential Information in confidence. Neither party shall disclose any Confidential Information without the knowledge and written approval of the authorized other party. For purposes of this Agreement "Confidential Information" means all terms of this Agreement, all information and know-how of a scientific, technical, operational or economic nature, the results of analysis provided hereunder and all Innovations. Confidential Information shall not include (i) information generally available to the public through no fault of the other party, (ii) information which the other party had already had

knowledge of, (iii) information which has become part of the public domain through no fault of a party, and (iv) information ordered to be disclosed by subpoena, other legal process or requirement of law. Each party agrees to return or destroy, on demand and without delay, any and all Confidential Information (including any and all copies thereof) of the other party which has come into its possession, provided, however, that NMS Labs may retain such media and materials containing Confidential Information for customary archival and audit purposes (including with respect to regulatory compliance). This Section shall survive any termination or expiration of this Agreement.

### **XIII. DISCLOSURE OF INNOVATIONS; OWNERSHIP OF INNOVATIONS**

- a. Client acknowledges that (i) prior to the date hereof NMS Labs has created, made, conceived, developed or reduced to practice, alone or jointly with others, inventions, improvements and other innovations, including, but not limited to, techniques and methodologies (including clinical methodologies) and markers, whether or not such inventions, improvements or other innovations are eligible for patent, copyright, trademark, trade secret or other legal protection and (ii) during the course of performance of the services hereunder, NMS Labs may create inventions, improvements and other innovations, may make, conceive, develop or reduce to practice, alone or jointly with others, inventions, improvements and other innovations, including, but not limited to, techniques and methodologies (including clinical methodologies) and markers discovered during testing (collectively, "Innovations"). Examples of Innovations shall include, but are not limited to, discoveries, research, inventions, formulas, techniques, business methods, know-how, marketing plans, new product plans, advertising, packaging and marketing techniques and improvements to computer hardware or software.
- b. Client agrees that all Innovations will be the sole and exclusive property of NMS Labs. Client hereby assigns all of Client's rights, title or interest in the Innovations and in all related patents, copyrights, trademarks, trade secrets, rights of priority and other proprietary rights to NMS Labs. At NMS Labs' request and expense, during and after the term of this Agreement, Client will assist and cooperate with NMS Labs in all respects and will execute documents, and, subject to Client's reasonable availability, give testimony and take further acts requested by NMS Labs to obtain, maintain, perfect and enforce for NMS Labs patent, copyright, trademark, trade secret and other legal protection for the Innovations. Client agrees to execute and deliver to NMS Labs such further instruments or documents as may be requested by NMS Labs in order to effectuate the purposes of this Section. This Section shall survive any termination or expiration of this Agreement.

### **XIV. NO OTHER WARRANTIES**

EXCEPT AS OTHERWISE SET FORTH HEREIN, NMS LABS MAKES NO REPRESENTATIONS NOR PROVIDES ANY WARRANTIES WHATSOEVER, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED OR STATUTORY, WITH REGARD TO THE SERVICES TO BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

### **XV. LIMITATION OF LIABILITY AND DAMAGES**

IN NO EVENT SHALL NMS LABS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOOD WILL, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS), WHETHER THE BASIS OF THE LIABILITY IS IN BREACH OF AGREEMENT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MAY ARISE. ACTIONS COVERED HEREIN INCLUDE BUT ARE NOT LIMITED TO; MISHANDLING OR LOSS OF PATIENT SAMPLES OR THE MISHANDLING OR LOSS OF PATIENT INFORMATION INCLUDING

TESTING RESULTS. THE LIABILITY OF NMS LABS TO CLIENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF COMPENSATION RECEIVED BY NMS LABS FROM CLIENT HEREUNDER DURING THE TWO MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH DAMAGES WERE INCURRED. THE PARTIES INTEND TO HAVE THIS LIMITATION OF LIABILITY SURVIVE ANY DETERMINATION THAT THE EXCLUSIVE REMEDIES PROVIDED TO CLIENT HEREUNDER HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

#### XVI. MUTUAL RELEASE

Each party shall hold the other party, its subsidiaries and affiliates, and each of their respective employees, officers, directors, attorneys, agents, and representatives, harmless from and against any and all claims, liabilities, expenses, losses, demands, damages, fines, penalties, and causes of action of every kind and character from any cause whatsoever, made, incurred, sustained, or initiated by any third party (including any employee, contractor or representative of a party hereto or any of their respective family members), arising out of, incident to, or in connection with such party's infringement of any third party's Ownership of Innovations intellectual property rights. This Section shall survive any termination or expiration of this Agreement.

#### XVII. FORCE MAJEURE

NMS Labs shall not be deemed to be in default of any provision of this Agreement, nor be liable for any delay, failure in performance or interruption of services, resulting directly or indirectly from acts of God, embargoes, quarantines, labor shortages, supply shortages, civil or military authority, civil disturbance, insurrection, war, acts of terrorism, fire, other catastrophes or any such other cause beyond its control.

#### XVIII. GOVERNING LAW/VENUE

This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania, without regard to that state's conflicts of laws principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against any of the parties in the courts of the Commonwealth of Pennsylvania, County of Montgomery, or, if it has or can acquire jurisdiction, in the United States District Court of the Eastern District of Pennsylvania, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding, waives any objection to venue laid therein and agrees that all claims with respect to such actions or proceedings shall be heard and determined only in any such court and agrees not to bring any actions or proceedings arising out of or relating to this Agreement in any other court. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world. The non-prevailing party in any action described in this Section shall pay the prevailing party's expenses and costs of such including, but not limited to, the fees and expenses of such party's attorneys and expert witnesses. This Section shall survive any termination or expiration of this Agreement.

#### XIX. HIPAA COMPLIANCE

Each party, represents and warrants that with respect to all protected health information (as that term is defined in the Privacy Regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), it is a covered entity (and not a business associate of the other party) under the Privacy Regulations and that it shall protect the privacy, integrity, security, confidentiality and availability of the protected health information disclosed to, used by, or exchanged by the parties by implementing and maintaining privacy and security policies, procedures, and practices, and administrative, physical and technological safeguards and security mechanisms that reasonably and adequately protect the confidentiality, integrity and availability of the protected health information created, received, maintained or

transmitted under this agreement , all as required by, and set forth more specifically in, the Privacy Regulations and the Security Regulations, as each may be amended from time to time. In the event HIPAA or the Privacy Regulations or Security Regulations require any addition to or modification of this Agreement, the parties shall use commercially reasonable efforts to agree upon such additions or modifications in a timely manner. If such agreement cannot be reached in a timely manner, either party may terminate this Agreement by written notice to the other party.

## XX. **EQUITABLE RELIEF**

Nothing in this Agreement shall be construed to prevent NMS Labs from seeking or obtaining a preliminary or permanent injunction or other equitable relief in any court of competent jurisdiction in the event of a breach by Client of any provisions of this Agreement. This Section shall survive any termination or expiration of this Agreement. Each party hereby represents and warrants to the other party that such party has caused this Agreement to be executed and delivered by a duly authorized representative of such party.

## XXI. **Notices**

### 1. **All Notices will be in writing and addressed as follows:**

To National Medical Services, Inc.:

ATTN: Andrew Nolan  
Vice President of Finance  
200 Welsh Road  
Horsham, PA 19044

To Client:

County of Summit  
Director, Department of Law  
175 South Main Street  
Akron, Ohio 44308  
[dmatz@summitoh.net](mailto:dmatz@summitoh.net)  
330-643-8052

Communications between NMS Labs and Client related to the direction or performance of this Agreement must be by letter, fax, or email, each having the same authority and constituting acceptable modes of communication under this Agreement. Formal Notice requires an original letter, or fax thereof, signed by the authorized representative identified in this Agreement. All Notices sent by letter will be deemed effective when confirmation of receipt is sent by the respective party's Notice Contact listed above. Notices transmitted via fax or communications transmitted via email will be deemed effective only upon confirmation of receipt of the fax or email transmission by email reply.

## XXII. **SEVERABILITY**

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement. Each valid provision hereof will be enforced to the fullest extent permitted by law. In the event any provision of this Agreement is determined to be invalid or unenforceable, the Parties will negotiate in good faith to create a provision that will be enforceable and is as consistent as possible with the original provision.



**XXIII. ASSIGNMENT**

The obligations assumed under this Agreement cannot be delegated and the rights cannot be assigned without the prior written approval of NMS Labs.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

**NATIONAL MEDICAL SERVICES, INC.  
d/b/a NMS Labs**

\_\_\_\_\_  
**Client** (Signature)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

\_\_\_\_\_  
Title (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**EXHIBIT A – PRICING**

**1. PRICING**

Pricing for the work performed under this agreement is as outlined below:

Client ID(s): 60345  
 Price Code Number:

Pricing Effective Date: 12/1/2022  
 Pricing Expiration Date: 12/31/2023

Test	Test Name	Projected Volume	Current List Price	Discount Price
8150B	DUID/DRE Panel Proof POSITIVE, Blood	100	\$297	\$223
8151B	DUID/DRE Panel (w/alcohol) Proof POSITIVE, Blood	200	\$315	\$236
8152B	DUID/DRE Expanded Drug Screen Add-On		\$131	\$98
8082B	DUID/DRE Inhalants Add-On Proof POSITIVE	5	\$289	\$217
8070U	DUID/DRE Panel (w/alcohol), Urine (Forensic)		\$258	\$194
8071U	DUID/DRE Panel, Urine (Forensic)		\$238	\$179
8075U	DUID/DRE Expanded Drug Screen Add-On		\$131	\$98
0175B	Alcohol, Blood (Forensic)	5	\$121	\$91
0175U	Alcohol, Urine (Forensic)		\$197	\$148
0170B	Alcohol Panel, Blood		\$82	\$62
0170U	Alcohol Panel, Urine		\$82	\$62

- a. All other services ordered during this effective period will be billed at prevailing List Price Fees. NMS Labs reserves the right to renegotiate the pricing for the work performed under this agreement if the projected volumes change from those volumes outlined in the pricing table.

**2. COVERED ENTITIES**

The pricing effective under this agreement is extended to the following entities:  
**Law enforcement agencies within Summit County, Ohio, including the Summit County Sheriff’s Office and the police departments of Akron, Barberton, Bath, Boston Heights, Cuyahoga Falls, Fairlawn, Hudson, Macedonia, Mogadore, Monroe Falls, New Franklin, Northfield, Norton, Richfield, Silverlake, Stow and Tallmadge.**

Unless specifically identified above, the pricing effective under this agreement shall not be applied to any other entities without prior written approval from NMS Labs.

## EXHIBIT B – CUSTOMIZED TERMS

### 1. NON-COVERED TESTING

Any services not included in Exhibit A and necessary to the performance of the work in accordance with this Agreement shall be billed at prevailing List Price Fees.

***The following clause should only be kept in the agreement if specifically requested by Client. If a specific clause is requested, then the TAT provided must be in either calendar days or calendar weeks***

### 2. TURNAROUND TIME

NMS Labs provides its estimated turnaround time for all tests included in the NMS Labs Test Catalog which can be accessed at <http://www.nmslabs.com/test-catalog/>.

### 3. EXPEDITED TESTING

NMS Labs does not provide STAT testing however; an expedited turnaround time may be provided to the Client for an additional fee. This fee would be in addition to the pricing as listed in Exhibit A.

### 4. TESTIMONY AND TRAVEL COSTS

Should the Client require NMS Labs to facilitate Experts to provide testimony or consultations on cases for which NMS Labs conducted the testing, NMS Labs will charge the Client in accordance with its Expert Services Fee schedule at the end of this agreement. Client is responsible for reimbursing NMS Labs for all travel expenses related to providing testimony or consultations for the Client.

Under the terms of this agreement NMS Labs is NOT responsible for providing Expert Services to the Client for cases that were:

- Tested prior to the effective date of this agreement and;
- NOT tested by NMS Labs

### 5. ADDITIONAL SERVICES

The following services are included in the price under this agreement:

***Remove the following section if not applicable***

- **[Discovery Packages or Litigation Packages]: [include explanation of what this includes]**  
NMS Labs shall provide an estimated **20 (140 for law enforcement agencies listed above)** packages throughout the term of this agreement for fees as outlined in Exhibit A.
- **Miscellaneous Forms:** Pricing included in Exhibit A includes administration of the following forms:
  - a. **[Restitution]:** To be provided in NMS Labs' standard format. These forms will be submitted to **[Client or Agency] [insert frequency]**
  - b. **[Affidavits]:** NMS Labs will provide un-notarized affidavits using NMS Labs' standard format. Affidavits will accompany reports submitted to the Client.

NMS Labs shall provide additional forms upon request of the Client for fees as outlined in NMS Labs' Expert Fee Schedule.

*For the following section, please select the option that applies to your Client's Agreement and fill in the bracketed areas as appropriate and removing other options that don't apply.*

#### 6. SAMPLE RECEIPT –

**Option 3:** Client will send samples using FedEx, Airborne, etc. adhering to guidelines detailed in the following link: <http://www.nmslabs.com/sample-submission/>. Samples will be sent to **[insert location address]** so that the shipment arrives between **[which days]** and the hours of **[insert which hours]**.

**[NMS Labs/Client]** is responsible for **[shipping/courier]** services as outlined above.

#### 7. SAMPLE RETENTION/STORAGE

Samples are stored and retained in accordance with NMS Labs Standard Operating Procedures to maintain compliance with its accrediting bodies.

Specimens handled as forensic cases are routinely retained for six (6) weeks after the final report is issued. To request extended storage of forensic specimen, a separate Specimen Retention Agreement must be executed between the parties, and pre-payment received prior to the sample retention expiration date. Failure to submit a request for extended storage with pre-payment shall be considered authorization to discard or destroy the specimen(s).

Under the terms of this agreement, NMS Labs **[will /will not]** store Client's samples that do not require testing, unless the Client agrees to pay NMS Labs a per sample fee per quarter for the storage of these samples as determined by NMS Labs.

#### **8. SAMPLE RETURNS**

Under this agreement the Client [~~requires/does not require~~] samples to be returned.

The samples be shipped directly to the Client's address or another address, the Client will be charged an additional fee for the return of the samples.

#### **9. SUPPLIES**

NMS Labs will provide the following collection and shipping supplies for work under this agreement:

- a. Requisition form templates in electronic Adobe™ PDF file format
- b. Ancillary Collection Tubes and/or plastic containers
- c. Collection Kits; kits can be provided that are specially designed for documentation, packaging and shipment of samples for analysis.

#### **10. SPECIAL REPORTING REQUIREMENTS**

Should NMS Labs determine that reports required by the Client do not qualify as "standard reports," The Client will be charged an additional fee to prepare these reports.

#### **11. SPECIAL BILLING REQUIREMENTS**

Should NMS Labs determine that the Client requires customizations to its standard billing; the Client will be charged an additional fee.

## Expert Services Professional Support

### ***Court Testimony and Depositions*** – in support of NMS Labs analytical testing services

Expert Testimony – Hourly Rate .....	\$263/hour
Expert Testimony – Daily Rate .....	\$2,625/day

*Testimony time is the Expert’s time door to door and includes in-person testimony, full video testimony, depositions, pre-trial prep and travel time. Client is responsible for all travel related expenses, mileage, meals, flights, hotel, etc.*

*All fees are calculated on an hourly basis. Daily rate will be applied after 10 hours of time spent on any of the above activities related to each testimony event. Other terms and conditions may apply.*

### ***Expert Opinions*** - written expert opinion reports in support of NMS Labs analytical testing services

Senior Toxicologist Review .....	\$420/hour
Toxicologist Review.....	\$368/hour

*An Expert Opinion report includes the Expert’s time for consultation, review of documentation, research and preparation of a written report. All fees are calculated on an hourly basis. Other terms and conditions may apply.*

### ***Other Services***

- Litigation Packet Preparation.....\$79/hour
- Certified Lab Reports, Affidavits, Chain of Custody documentation .....\$79/each



NMS Labs, 200 Welsh Road, Horsham, PA 19044  
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 expertservices@nmslabs.com

Tax ID # 23-1731658

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