

# AGREEMENT FOR SERVICES

#546-PHD0906

*with*

**DADE BEHRING, Inc.**

*for*

Laboratory Reagents, Equipment, Maintenance, and Technical Support

**THIS AGREEMENT** made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Dade Behring, Inc. SYVA, a Delaware Corporation, duly qualified to conduct business in California, whose principal place of business is 500 GBC Drive, building 500, Newark, DE, 19702 (hereinafter referred to as "Contractor");

## WITNESSETH

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide drug testing equipment and supplies for the County's Public Health Laboratory; and

**WHEREAS**, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws as such apply to each party's responsibilities and obligations under this agreement; and

**WHEREAS**, County has determined that the provision of such services provided by Contractor are in the public's best interest, and authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Contractor mutually agree as follows:

## ARTICLE I

**Scope of Services:** Contractor agrees to provide all necessary Analyzer equipment; specifically the V-Twin Analyzer and the iMS WinTox Ver. 5 (or iMS WinTox Ver. 6 if it is ready at time of execution of this contract) data management system, applicable hardware, software and testing reagents (hereinafter referred to as the system) to provide Enzyme Multiplied Immunoassay Technique (EMIT) testing for Drugs of Abuse at the El Dorado County Public Health Laboratory.

Contractor will provide an iMS WinTox Laboratory Information System (LIS) that includes a bi-directional interface with the computer that runs the Analyzer and other hardware. The LIS must be capable of producing a variety of query and statistical reports on the information stored to assist in tailoring program testing criteria. The LIS shall have the capability of collecting data including, but not limited to: name, file #, gender, DOB, submitter, date and time collected, witness, date and time received, and/or received by. In addition, the system must be capable of sending results to clients via auto fax and/or email without the requirement of staff printing and faxing reports and must have the ability to bill and post payments. The system should be capable of storing a minimum of one year worth of tests (12,000). It would be desirable to have LIS capable of backing up data to DVD/CD formats and be able to print in .pdf file format.

Contractor must provide user guide information, in English, in a notebook hard copy and on electronic media to the El Dorado County Public Health Laboratory for use in operating the equipment and troubleshooting minor equipment malfunctions.

Contractor must provide 2 "hard" copies of drugs of abuse testing "reference manual" which include drug information/classification tables. This reference guide should be updated regularly and should also be available to the El Dorado County Public Health Laboratory in electronic/digital format.

Contractor shall provide a thirty-day acceptance period following installation and stabilization/testing by Contractor of the complete Analyzer, hardware and software system. The County will evaluate Contractor's system during this thirty-day period to insure that the system functions to contractor's specifications as defined in its proposal. Upon successful completion of the acceptance period, County shall accept and pay for all delivered products and services in accordance with the signed agreement.

Acceptance occurs upon delivery of equipment. However, if County identifies an issue specifically related to the installation of the equipment within 45 days of delivery, Dade Behring agrees to cure the issue. If Dade Behring does not cure the issue to County's satisfaction, Dade Behring will nullify acceptance of the instrument and agree to a mutually acceptable resolution with the County. If Contractor's system does not perform to the satisfaction of the Public Health Laboratory, Contractor shall remove all equipment within thirty (30) calendar days following written notification by the County to do so with no further obligation by the County.

Contractor shall provide technical support during the County's normal business hours as needed either in person or by telephone and/or on-line support at no additional charge. Contractor will provide a toll free telephone number for technical support. The toll free number shall not have an automated attendant without the option of contacting support staff during normal business hours.

Contractor will include all preventive maintenance required to maintain the system cost to El Dorado County throughout the term of the contract. The preventive maintenance shall include instrument labor, parts, freight, travel and/ any other expense necessary.

Contractor will provide El Dorado County with replacement kits for any problem identified by County that causes loss of use of reagents due to a technical problem. Wasted reagents due to technical problems and for troubleshooting purposes will be replaced at no cost to County. County will be responsible for identifying and reporting these problems with an invoice to Vendor.

Customers are requested to contact the Technical Assistance Center (TAC) twenty-four hours per day, seven days per week for all inquiries at the Contractor's expense; including clinical and technical phone assistance or on-site service requests at this number:

**Syva Technical Assistance Center 1.800.227.8994**

The TAC is Dade Behring's front line operation to resolve minor issues and get the equipment operational as fast as possible. Our TAC personnel, System Specialists, and Engineers possess a strong clinical and/or technical background. Most issues that come into the TAC are resolved over the telephone with advice/information or parts which are shipped out at the expense of Dade Behring. If our TAC personnel determine that more extensive service is required they will notify the local Field Service Representative (FSR). The FSR will call the customer to schedule a visit and determine if additional parts or resources may be required.

Guidelines for the use of the Analyzer and the Data Management System, as well as additional related services, are listed in Exhibits A and B, respectively.

**ARTICLE II**

**Term:** This Agreement shall be effective when signed by both parties hereto and shall expire October 31, 2009. County reserves the right to extend the term of the contract for three additional one-year terms, when notification is provided to Contractor in writing, signed by the Contract Administrator as identified under Article XXIII, provided such extensions are in the best interest of the parties.

At the end of the term, Contractor may sell said Analyzer and transfer title to County for fair market value as determined by the manufacture. Contractor will, at this time, adjust the price of the products and/or service to reflect that the contract has been fulfilled. County may exercise the option to return the Analyzer to Contractor. At end of term, or in the event of terminating this Agreement, costs associated with preparing, shipping and returning Analyzer to Contractor will be at the expense of the Contractor.

At the end of the contract term, if a new vendor is selected, Contractor will assist with data transfer to a new LIS, if needed.

**ARTICLE III**

**Compensation for Services:** The County of El Dorado makes no specific guarantee of the

number of tests that shall be required annually, however it is estimated that approximately 114,400 specimens will be eventually tested once testing has been started and stabilized.

Cost of EMIT Drugs of Abuse Reagents is \$0.40/test. Included within the cost per test is use of Analyzer, WinTox system, Reagent and all applicable technical support and service. Consumables will be priced at an 80% discount from 2006 Tier Appropriate List Price. Contractor will pay for the first 50 positive specimens to be confirmed via GCMS.

Contractor will provide El Dorado County enough reagents to verify and validate 30 proficiency testing samples obtained from an external source of its choosing.

Award prices shall not be increased at any time greater than 2.5% annually; however any discount shall not be eliminated at anytime during this term. In addition to any changes made to assure market competitiveness, vendors may lower the award prices or increase any discounts applicable to the purchase of the products at any time.

The County reserves the right to ask for new pricing each calendar year based on the volume of tests that are performed. If on an annual basis the total test volume changes significantly, the County and Contractor may renegotiate the pricing and pricing may be adjusted by mutual agreement of County and Dade Behring.

The contractor shall invoice after delivery of ordered reagents for the specific number and types of Drugs of Abuse analytes actually ordered and priced as indicated in the contractor's original proposal. County shall reimburse Contractor within 45 days of date of original invoices which reflect detail regarding period being billed, services performed, compensation due for each service, and total compensation due for all services. Contractor shall not charge late fees or interest charges for invoices paid.

Invoices are to be submitted to:

Michael Deatherage, Public Health Lab Director  
931 Spring Street  
Placerville, CA 95667.

#### **ARTICLE IV**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE V**

**Contractor to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

## ARTICLE VI

**Assignment and Delegation:** Contractor is engaged by County for their unique qualifications and skills as well as those of their personnel. Neither party shall subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of the other party such consent not to be unreasonably withheld.

## ARTICLE VII

**Independent Contractor/Liability:** Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable to the extent of its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

## ARTICLE VIII

**Scope and Ownership of Work:** Notwithstanding anything to the contrary contained in this agreement, Consultant shall retain all of its rights in its own proprietary information, including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by the Consultant prior to, or acquired by the Consultant during the performance of this agreement and the Consultant shall not be restricted in any way with respect thereto

## ARTICLE IX

**Title:** Dade Behring will retain title to the Equipment. You agree to clearly indicate that the Equipment is the sole property of Dade Behring. You also agree that Dade Behring may file a UCC financing statement, or any other document or instrument required by law, to give public notice of Dade Behring's interest in the equipment. This remains valid throughout the term of this contract. If at the end of the term the County chooses to purchase the Equipment title will transfer to the county.

## ARTICLE X

**Customer's Responsibilities.** (a) YOU AGREE NOT TO SELL, TRANSFER, LEASE OR DISPOSE OF THE EQUIPMENT OR TO PERMIT ANY OTHER PERSON TO HAVE ANY INTEREST IN IT. You shall keep the Equipment free of all liens and encumbrances. You shall not move the Equipment from the Equipment location without our prior written consent. (b) You agree that you will use the Equipment solely for your business purposes in the manner for which it was intended. (c) You shall keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. You shall perform all maintenance requirements described in the manuals provided by the manufacturer and keep the Equipment safe from hazards. All replacement parts and attachments shall become part of the Equipment. (d) You shall maintain primary insurance on the Equipment upon delivery at your own cost with an insurance company acceptable to Dade Behring.

(e) You shall give us reasonable access to inspect the Equipment. This remains valid throughout the term of this contract.

#### **ARTICLE XI**

**Warranty:** Dade Behring warrants that the Consumables are free from defects in material and workmanship and conform to the labeling claims which accompany them. Dade Behring promises that if County uses the Equipment as would be normally expected, and it fails to meet the claims made for it in its labeling, Dade Behring will repair or replace the Equipment in accordance with the service arrangement set forth in this Agreement. Dade Behring also promises that the use of the Equipment and the Consumables in the form delivered to County and in accordance with their instructions will not infringe the U.S. patent of any third party. This promise does not cover the use of the Equipment or Consumables in combination with any other product or equipment. Dade Behring Equipment and Consumables are designed and certified with applicable regulatory authorities as an integrated instrument/reagent/consumable system. Use of unapproved parts or consumables with County's Dade Behring Equipment and consumables will void any service contract County may have with Dade Behring. If any services are performed on the instrument other than through Dade Behring's Service Representative, such service would also void any service contract or warranty County may have with Dade Behring. Dade Behring is not required to add any design, engineering, or performance change or development into the Equipment after it is delivered to County. In no event will Dade Behring's obligations herein require it to pay more than the aggregate purchase price of the Consumables County have purchased during the term of this Agreement. DADE BEHRING MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, MERCHANTABILITY, OR FITNESS FOR ANY PURPOSE IN CONNECTION WITH THE EQUIPMENT OR CONSUMABLES. County will not make any claim against Dade Behring for any special consequential or incidental damages. No oral or written promises as to the Equipment or Consumables which conflict with the statements in this Paragraph will bind Dade Behring unless signed by an authorized representative of the party to be bound

#### **ARTICLE XII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for

financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation. In the event of termination the County is responsible to pay for product ordered and shipped prior to termination.

### **ARTICLE XIII**

#### **Default, Termination, and Cancellation:**

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within thirty (30) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part thirty 30 calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means. Should this agreement be terminated, Contractor shall promptly provide to County any and all finished and unfinished reports, data, studies, photographs, charts and other documents prepared by Dade Behring Inc. pursuant to this agreement. In the event of termination County is responsible to pay for product shipped prior to termination. In the event that the County purchases above and beyond the total amount of the contract, it is the County's responsibility to amend and increase their budget.

### **ARTICLE XIV**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by

depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: GAYLE ERBE-HAMLIN, DIRECTOR

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

DADE BEHRING INC.  
1717 DEERFIELD RD.  
DEERFIELD, IL 60015  
ATTN: HEATHER SOLOMON, SYVA BUSINESS ANALYST

or to such other location as the Contractor directs.

#### **ARTICLE XV**

**Indemnity:** To the fullest extent of the law, Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance to the extent of the existence or degree of fault or negligence on the part of the Contractor, subcontractor(s) and employee(s) of any of these, except as expressly provided by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XVI**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements: Sent to Jamie 11.10.2006

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under



this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.

- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers

and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

#### **ARTICLE XVII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XVIII**

**Interest of Contractor:** Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

#### **ARTICLE XIX**

**California Residency (Form 590):** All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XX**

**Taxpayer Identification / Form W9:** All individuals/sole proprietors, corporations, partnerships, associations, organizations or public entities providing services to the County shall provide a fully executed Department of the Treasury Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification".

#### **ARTICLE XXI**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to,

litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

#### **ARTICLE XXII**

**HIPAA:** Under this Agreement, Contractor will provide services to County and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to Contractor for the purposes of carrying out its obligations. Contractor agrees to comply with all the terms and conditions of Exhibit C, HIPAA Business Associate Agreement, attached hereto and made by reference a part hereof, regarding the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated there under.

#### **ARTICLE XXIII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Director of Public Health, or successor.

#### **ARTICLE XXIV**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

#### **ARTICLE XXV**

**Access to Records/Retention:** County, federal and state officials shall have reasonable access under mutually agreeable terms to any books, documents, papers and records of Consultant which are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of Consultant or County. Except where longer retention is required by federal or state law, Consultant shall maintain all records for five years after County makes final payment hereunder.

#### **ARTICLE XXVI**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

#### **ARTICLE XXVII**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

**CONTRACTOR**

By: Heather Solomon  
Heather Solomon, SYVA Business Analyst  
Dade Behring, Inc.

Date: 12.1.2004

By: Joseph A. Negro, Jr.  
Assistant Secretary

Date: 12-1-06

**COUNTY OF EL DORADO**

By: James R. Sweeney  
James R. Sweeney, Chairman  
El Dorado County Board of Supervisors

Date: 12/12/06

ATTEST:  
Cindy Keck, Clerk

By: Cynthia Johnson Date: 12/12/06  
Deputy Clerk

## EXHIBIT A

### GUIDELINES FOR THE ANALYZER

Testing capabilities for the following drugs and/or their metabolites:

THC	Opiate	Amphetamines
Cocaine	Benzodiazepines	Methamphetamines
Phencyclidine	Barbiturates	Methadone
LSD	Methaqualone	Alcohol
Propoxyphene		
MDMA		

Testing of the following to determine adulteration and/or dilution:

Creatinine  
Specific Gravity  
PH  
Oxidants

The current estimate should be based on annual number of single test performed being 114,000.

Contractor shall address specific capabilities and pricing for handling increased test volumes above this amount to include price breaks.

The Drug testing software and any supporting software must be able to print individual reports, email and/or fax them directly from the computer system.

The drug testing system must use methods and output results that conform to federal and state guideline and/or laws or industry practices as well as HIPPA should that become an issue in El Dorado County business practices.

The drug testing system must be restored to normal operations, via repair or exchange after the initial call for service is placed. Dade Behring will offer a 98% uptime performance guarantee for the V-Twin™, Viva-E™, and Viva-Jr™. This guarantee is strictly limited to electrical and mechanical hardware failure, which requires a Dade Behring Field Service Representative to perform on-site repairs or to adjust the unit to functional specifications. This agreement excludes operator replaceable maintenance parts and supplies as well as reagents and consumables.

Downtime is defined as the time period when the equipment as a system produces no patient test results due to breakdown, performance of repairs, or failure to perform to specifications. The period of hard downtime is measured from initial notification to TAC, until the equipment is returned to the designated Lab representative properly functioning and ready for use. Routine preventive maintenance, scheduled hardware or software upgrade and environmental failures (i.e. air conditioning or power loss) shall not

be considered downtime. Occurrences caused by accidents or disasters, which shall include, but not be limited to, fire, flood water, wind, lightning, earthquake, and termination of or surge in electric current, or the use of supplies, disposables, consumables or reagents other than those expressly recommended by the Equipment manufacturer shall not be considered downtime.

Uptime will be calculated for each annual period by dividing the sum of available hours less downtime hours by the total number of hours available. Available hours are based on 24 hours per day and 7 days per week. If Business Hours service contract coverage (8 am to 5 pm, Monday – Friday) is selected, the available hours will be based on 9 hours per day, 5 days per week. Downtime, as defined above, will likewise be adjusted for this time period. For any requested on site service or part delivery outside the service contract period, the customer must agree to provide a purchase order. The percent of instrument uptime will be calculated only upon dispute.

The uptime guarantee shall only apply in the event that the customer maintains an ongoing Dade Behring 24/7 or Business Hours Service Maintenance Contract for their instrument after the initial service agreement. All Standard Terms and Conditions as stated in the Service Agreement shall apply, including exclusions for the delivery of field service. The uptime guarantee will remain in effect for the term of the Agreement.

The proposal must include installation of the equipment, and shipping of said equipment.

Contractor will provide off site training in Delaware for one operator from El Dorado County's Public Health Laboratory at no cost to the El Dorado County Health Department (includes airfare, meals, lodging, and ground transportation in Delaware).

Contractor will also provide training for 2 additional El Dorado County Public Health Employees within 45 days of the installation of the analyzer on-site. Training to include proper operation of laboratory equipment and software provided for data management.

Acceptance occurs upon delivery of equipment. However, if El Dorado County Public Health identifies an issue specifically related to the installation of the equipment within 45 days of delivery, Vendor agrees to cure the issue. If Vendor does not cure the issue to El Dorado County Public Health's satisfaction, Vendor will nullify acceptance of the instrument and agree to a mutually acceptable resolution with the El Dorado County Public Health.

At a minimum the analyzer system must be capable of the following or have the following features:

**V-Twin Reagent system**

- Two rotors each with 24 positions for 25 ml bottles and 8 positions for 5 ml bottles.
- All positions can be assigned as R1 and R2.
- Adapters for 5 ml bottles in 25 ml positions.
- 10 pairs of 25 ml positions can be used for 50 ml bottles.
- Reagent 1 volume 110 - 400 µl

- Reagent 2 volume 0 - 180  $\mu$ l
- Reagent disk compartment is cooled to approx. 12°C below ambient temperature.
- Preheated reagent needle with level detection and integrated mixer.
- Typical reagent consumption 250  $\mu$ l per test.
- Sample system
- Sample rotor containing
  - 80 barcode read samples positions
  - Inner ring for 20 calibrators and 10 controls
- stat and pediatric samples
- Continuous loading.
- Internal barcode reading
- Primary tubes (13 or 16 mm OD)
- All positions can contain 5 ml or 10 ml primary tubes or sample cups.
- Sample volume 1 - 30  $\mu$ l per test, programmable in steps of 0.1  $\mu$ l.
- Sample probe with level detection and integrated mixer.

#### Sample predilution

- (Dual mode only)  
Programmable ratios 1:5, 1:10, 1:20, 1:30, 1:40, 1:50 with 3 possible diluents.

#### Pipetting system

- Hamilton syringes and valve block.
- Reagent syringe 1000  $\mu$ l.
- Sample syringe 100  $\mu$ l.

#### Reaction disk

- Semi-disposable rotor with 48 cuvettes. Path length 7 mm.
- Minimum measuring volume 220  $\mu$ l.
- Measuring temperature 37°C, controlled by Peltier elements.

#### Washing unit

- Cuvette-washing with 4 x 500  $\mu$ l of water. The unit is equipped with liquid sensors. Waste is separated into diluted and concentrated (sample/reagent mixture) waste. Cuvettes are dried before use.

#### Light source

- Quartz-iodine lamp 12V-20W.

#### Optics & Wavelength range

- 2 optical units each with n 8 position filter wheel
- Automatic wavelength selection by 8-position filter wheel (340, 376, 405, 436, 505, 546, 578 and 620 nm).
- Other wavelengths available on request
- Half bandwidth 8 to 12 nm

#### Photometric range

- -0.1 to 3.0 Absorbance

#### Analytical modes

- Kinetic measurement with linearity check.
- Bichromatic end point measurement with or without bichromatic reagent blank and/or sample blank correction.
- Two point measurement.
- Graphic plot of all measuring points.
- Automatic rerun with sample reduction.
- Non-linear calibration curves

#### Ambient temperature

- 15 - 32°C.
- Maximum humidity 80%.

#### Measurement capabilities

##### (Single reagent mode)

- Reagent Absorbance before sample addition.
- Kinetic during 7 minutes after sample addition.
- End Point (Bichromatic) 11.5 minutes after sample addition.
- Kinetic can contain two points for two-point measurements

##### (Dual reagent mode)

- Reagent Absorbance (bichromatic) before sample addition.
- Kinetic 1 for 4.5 minutes after sample addition (can be used as sample blank for Kinetic 2).
- Kinetic 2 for 4 minutes after reagent 2 addition.
- Kinetic 1+2 for 8.5 minutes after sample addition.
- Sample blank (bichromatic) before reagent 2
- Endpoint (bichromatic) 4.5 minutes after sample addition or 11.5 minutes after sample addition
- Kinetic 1, Kinetic 2 or Kinetic 1 + 2 can contain a minimum measuring time or two points for two-point measurements.

#### Quality control

- Up to 15 different controls can be defined, 3 per test.
- Westgard rules.
- Levey-Jennings plots.

#### Dimensions

- Floor Standing 117 x 115 x 77 cm (W x H excl. Monitor x D)



## **EXHIBIT B**

### **GUIDELINE FOR THE DATA MANAGEMENT SYSTEM**

The Data Management System must be installed in the laboratory within five feet of the analyzer. The Data Management System must be fully customizable to meet the needs of our laboratory. The Data Management System must be very robust to any platform. The Lab's reporting needs will be carefully designed to provide efficient viewing, reporting, printing, archiving and transmission /delivery of reports. The WinTox system should be able to perform and include the following:

#### **Customer Service**

Representative from WinTox system should be available via 800 numbers during El Dorado County Public Health Laboratory business hours (8am-6pm PST) and preferably 24/7 to provide customer service issues related to WinTox system.

#### **Report Delivery**

Software must provide automatic reporting of results to client on-site and off-site through various methods, including:

- Local & Network Printers
- Remote Workstation Viewing & Printing
- Auto Batch Faxing
- Email Reporting
- Internet Reporting
- Dial-up Access to Reports

#### **Rapid Order Entry**

Default order data and standing orders must be configurable in system preferences, donor setup, and order entry.

#### **Client Information Screen**

Includes drug admission and prescription information.

#### **Calculated Tests**

Enable the user to build mathematical calculations from current previous results, including THC ratio.

#### **Reflex Conditions**

User can build multiple conditions to add, delete, or rerun assays and profiles.

#### **Billing/AR Conditions**

Should have the ability to bill\* and post payments\* into the system, assign different fees for different submitters and if possible to track payments through aging reports.

\* Essential functions.

#### **Import/Export Capabilities**

County can contract with iMs for additional designed Import/Export capabilities in order to Schedule regular export of result data in real-time or time intervals via FTP or Internet if Internet capabilities are activated in the Data Management.

### **Query Report Writer**

Enables user to select reports desired via predetermined parameter fields of information set within the program.

### **Quantitative and Qualitative Results**

User can select the reporting method per assay to print a qualitative text message or the numeric result with or without the flag.

### **Bar-coding Capability**

Bar coding on order entry should be available for V-Twin instrument, specimen lab slip and specimen cup identification.

### **Chain of Custody**

Chain of Custody forms available at order entry with client information and unique accession number. These forms must be printed based on the specifications of El Dorado County Public Health Laboratory.

### **Unique Accession Number Tracks Specimen Record**

Unique accession number on specimen cup bar code, chain of custody form and lab report tracks from order entry to instrument resulting.

### **Auto Rerun of Positives**

Automatically initializes assay to receive rerun value while storing the previous result for review as well as provide barcode for re-aliquoting specimen.

## EXHIBIT C

### HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement is made part of the base contract ("Underlying Agreement") to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the "Effective Date").

#### RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 - 164 (the "Privacy and Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and

WHEREAS, Contractor, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; and

WHEREAS, "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g); and

WHEREAS, the parties agree that any disclosure or use of PHI or EPHI be in compliance with the Privacy and Security Rule or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of County Disclosed PHI
  - A. Contractor shall be permitted to use PHI disclosed to it by the County:
    - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County
    - (2) as necessary to perform any and all of its obligations under the Underlying Agreement.

B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or Required by Law, Contractor may:

- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
- (2) disclose the PHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:
  - (a) The disclosure is Required by Law; or
  - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:
    - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as Required by Law; and,
    - (ii) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
- (4) not disclose PHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
- (5) de-identify any and all PHI of County received by Contractor under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.

C. Contractor agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as Required by Law, or as otherwise permitted by law.

3. Obligations of Contractor. In connection with its use of PHI disclosed by County to Contractor, Contractor agrees to:

- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
- B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
- C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of this Business Associate Agreement.
- D. Report to County any use or disclosure of PHI not provided for by this Business Associate Agreement of which Contractor becomes aware.
- E. Require sub-contractors or agents to whom Contractor provides PHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Business Associate Agreement.
- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.
- G. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the County and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
- H. Contractor will report any security incident of which it becomes aware to the County. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or "pings".
- I. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
- J. May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).

4. PHI Access, Amendment and Disclosure Accounting. Contractor agrees

to:

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
- B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
- C. To assist the County in meeting its disclosure accounting under HIPAA:

- (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
  - D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
  - E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
  - F. Within sixty (60) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.
  - G. Not make any disclosure of PHI that County would be prohibited from making.
5. Obligations of County.
- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - B. County agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - C. County agrees that it will make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI.

- D. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that Contractor can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term – this Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the Contractor, the County shall either:
  - (1) Provide Notice and a 10-day opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by the County.
  - (2) Immediately terminate this Agreement if the Contractor has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
  - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the Contractor shall return or destroy all PHI received from the County, created or received by the Contractor on behalf of the County. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Contractor. Contractor shall retain no copies of the PHI.
  - (2) In the event that the Contractor determines that returning or destroying the PHI is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the

return or destruction infeasible, for so long as the Contractor maintains such PHI.

7. HIPAA Business Associate Indemnity

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Business Associate Agreement. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with



Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment – the parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival – the respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References – a reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts – any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.