



## Christian County Commission

100 West Church St, Room 100  
Ozark, MO 65721

**SCHEDULED**

**MEETING ATTACHMENTS (ID # 5193)**

Meeting: 08/12/20 10:00 AM

Department: County Clerk

Category: Meeting Items

Prepared By: Paula Brumfield

Initiator: Paula Brumfield

Sponsors:

DOC ID: 5193

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# Meeting Attachments

### ATTACHMENTS:

- 081220 COVID-19 TESTING AGREEMENT - PTC LABORATORIOS INC\_ (PDF)

# Covid-19 Testing Agreement

This Covid-19 Testing Agreement (the "Agreement"), effective as of the 12<sup>th</sup> day of August 2020 (the "Effective Date"), is entered into by and between PTC Laboratories, Inc. (PTC), having a business address at 300 Portland Street, Suite 300, Columbia, MO 65201 (hereinafter "Provider") and Christian County, MO having a business address at 100 W. Church, Ozark, Missouri (the "Client"). Provider and Client may be individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Provider is the provider of certain genetic testing laboratory services, including testing to detect the presence of the SARS-COV-2 virus, also known as the novel coronavirus (the "Virus Testing" or "Services," sometimes referred to as a "laboratory test"); and

WHEREAS, Client wishes to obtain or prescribe Services for patients within its health system;

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

## 1. Scope.

- a. Provider agrees to provide Virus Testing for specimens collected by or on behalf of Client. Client agrees to collect specimens from patients of Client and provide such specimens to Provider for the purposes of Virus Testing.
- b. Client will supply specimen collection materials ("Specimen Collection Kits") and instructions ("Specimen Collection Instructions") for collecting specimens from patients.
- c. Client must furnish Provider with a completed Test Requisition Form (in the form agreed to by Provider and Client) with or in connection with each specimen. Client acknowledges that Provider has no obligation to process specimens without a properly completed Test Requisition Form.
- d. Client shall collect and label specimens in accordance with the Specimen Collection Instructions agreed by Provider and Client.
- e. Client acknowledges and agrees that Provider (i) does not provide genetic counseling services to patients, and (ii) is only obligated to deliver test results of the Services to Client. Client is responsible for delivering such test results to the ordering physician.

## 2. Fees.

- a. For each Virus Test that Provider performs on a specimen from Client, the Client shall pay Provider one hundred twenty-five dollars (\$125.00).
- b. Once per calendar month, Provider will submit an invoice documenting amounts due for the services provided by Provider pursuant to this Agreement to Client

during the prior calendar month. Each invoice shall include sufficient information to aid Client in tracking the specimens for each patient. Such information may include but is not limited to the patient's first and last name; date of birth; and the date on which the specimen was collected.

- c. Client shall pay Provider within 30 days from the receipt of the invoice. In the case of a dispute, both parties will make commercially reasonable efforts to resolve the issue within 15 calendar days of receipt and Client will use reasonable efforts to submit the agreed upon payment within 15 calendar days thereafter.
- d. All payments to Provider shall be made in full by check or bank wire transfer in U.S. dollars available at Provider's U.S. bank, or otherwise as Provider may direct in advance. The Parties acknowledge that on time payment for the Services is a material requirement of this Agreement and that failure to make on time payments shall constitute a material breach of this Agreement. Payments due from Client to Provider, and not received by Provider within thirty days of Provider emailing the invoice to Client, shall accrue interest at the rate of twelve percent (12%) per annum. Provider shall apply payments from Client first to any interest due hereunder.

### 3. Representations and Warranties.

- a. Provider hereby represents, warrants and covenants that: (i) Provider, its employees and contractors shall have and maintain during the term of this Agreement all U.S. federal and state licenses or certificates that are required by applicable law, rule, or regulation to perform the Services; and (ii) Provider will perform the Services in a professional and workmanlike manner, and in accordance with such applicable laws and regulations.
- b. Client hereby represents, warrants and covenants that: (i) Client, its employees and contractors shall have and maintain during the term of this Agreement all licenses or certificates that are required by law or regulations to perform its obligations under this Agreement; and (ii) Client will perform its obligations under this Agreement in a professional and workmanlike manner, and in accordance with such applicable laws and regulations.
- c. Without limiting the generality of the foregoing representations, warranties, and covenants, each Party, including its employees and contractors, shall comply with all laws and regulations preventing fraud and abuse within the healthcare industry, including but not limited to the federal Anti-Kickback Statute and the federal Physician Self-Referral (Stark) Law.
- d. This Agreement is intended to be in compliance with all applicable laws as of the Effective Date. The Parties agree to amend this Agreement to bring it into compliance with future applicable law as may be required.

### 4. Term and Termination.

- a. The term of this Agreement shall begin on the Effective Date and shall terminate thirty days following the date that one Party receives written notice from the other Party of an election to terminate.
- b. The termination of this Agreement shall not affect any rights or obligations of either

Party accruing prior to such termination.

5. Miscellaneous.

a. **Indemnification.**

i. By Provider.

1. Provider agrees to indemnify, defend and hold harmless Client, its parent company and affiliates, their officers, directors, representatives and employees (Client and each of the foregoing a "**Client Indemnitee**") against any and all claims or actions brought by a third party arising out of any personal injury, death, or other harm to any of Client's patients caused by Provider's negligence or willful misconduct in performing Services (referred to as a "**Client Claim**"). The obligation of Provider to indemnify, defend and hold harmless a Client Indemnitee from a Client Claim does not apply to the extent that such Client Claim is attributable to the fraud, negligence, gross negligence, or willful misconduct of a Client Indemnitee.
2. If Provider is made liable for a claim under the preceding paragraph then, subject to the requirements of subsection (iii) below regarding the handling of claims, Provider shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such Client Indemnitee in connection with such Client Claim.

ii. By Client.

1. To the extent permitted by law and without waiving sovereign immunity, Client agrees to indemnify, defend and hold harmless Provider, its parent company and affiliates, their respective officers, directors, representatives and employees (Provider and each of the foregoing a "**Provider Indemnitee**") against any and all claim or action brought by a third party arising out of any personal injury, death, or other harm to any of Client's patients caused by Client's negligence or willful misconduct in performing its obligations under this Agreement (referred to as a "**Provider Claim**"). The obligation of Client to indemnify, defend and hold harmless a Provider Indemnitee from a Provider Claim does not apply to the extent such Provider Claim is attributable to the fraud, negligence, gross negligence, or willful misconduct of a Provider Indemnitee.
  2. If Client is made liable for a claim under the preceding paragraph then, subject to the requirements of subsection (iii) below regarding the handling of claims, Client shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such Provider Indemnitee in connection with such Provider Claim.
- iii. The Parties' indemnification obligations under Section 5(a) are subject to the Party seeking indemnification (a) notifying the indemnifying Party promptly in writing of the claim, (b) giving indemnifying Party exclusive control and authority

over the defense of such claim, (c) not admitting infringement of any intellectual property right without prior written consent of the indemnifying Party, (d) not entering into any settlement or compromise of any such action without the indemnifying Party's prior written consent, and (e) providing all reasonable assistance to the indemnifying Party that the indemnifying Party requests and ensuring that its officers, directors, representatives and employees and other indemnitees likewise provide assistance (provided that indemnifying Party reimburses the indemnified Party(ies) for its/their reasonable out-of-pocket expenses incurred in providing such assistance). An indemnifying Party will not enter into or otherwise consent to an adverse judgment or order, or make any admission as to liability or fault that would adversely affect the indemnified party, or settle a dispute without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

- b. **Independent Contractor.** Each Party is an independent party and shall not be construed to be an agent or representative of the other Party. In addition, neither Party, nor any of its employees, agents, or subcontractors, shall be deemed to be employees or agents of the other Party. Therefore, neither Party nor any of its employees, agents or subcontractors, shall be entitled to compensation, workers compensation, or employee benefits of the other Party by virtue of this Agreement. Furthermore, neither Party shall be deemed an agent or employee of the other and neither shall have actual, apparent or implied authority to bind the other to any obligation whatsoever.
- c. **Confidentiality.** Provider and Client shall comply with applicable federal and state laws regarding the confidentiality of medical records, including but not limited to applicable provisions of the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 and their implementing regulations. This provision shall not preclude access to records to confirm the proper performance under this Agreement in accord with applicable law. The Parties acknowledge that in connection with this Agreement, each may receive or have access to proprietary and confidential information of the other. As used herein, "**Confidential Information**" means any business, financial, customer, product, technology or service information received by a Party from the other Party, or information that is marked as Confidential or with another similar confidentiality legend or if disclosed orally is identified as confidential at the time of disclosure and reduced to a written summary, also marked as Confidential, that is provided to the recipient Party within 30 days (email acceptable) other than: (a) information which at the time of disclosure is published or otherwise generally known or available to the public; (b) information which, after disclosure by the other Party, is published or becomes generally known or available to the public through no fault of the receiving Party; (c) information in the possession of the receiving Party without obligation of confidentiality; or (d) information that is independently developed by or for the receiving Party without use of or reference to the Confidential Information of the disclosing Party. Each Party agrees that, during the term of this Agreement and for a period of 5 years thereafter (the "**Confidentiality Term**"), it shall not disclose the other Party's Confidential Information, directly or indirectly, to any third party

without the consent of the other Party, except as expressly permitted herein or unless disclosure is required by law. Each Party further agrees that during the Confidentiality Term it shall not use such Confidential Information except as is necessary to perform its obligations under this Agreement. Notwithstanding the foregoing, Provider may disclose Client's Confidential Information to its parent company and affiliates as necessary to perform hereunder or for administration of its business, but only upon such parent company and affiliates prior written agreement to be bound by the confidentiality requirements contained in this Agreement.

- d. **Referrals.** The Parties agree that any payments required hereunder represent fair market value for the services rendered by the Parties and that the payment of monies hereunder in no way represents the division, sharing, splitting or other allocation of fees for medical services. The Parties further agree that any benefit, consideration or remuneration conferred upon one Party under this Agreement is not in any way contingent upon or related to, directly or indirectly, the solicitation of or the referral of or any other arrangement for the provision of, any item or service offered by the other Party or their parent companies or affiliates.
- e. **Notices.** Unless otherwise provided, any notice required under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the Party to be notified, or upon receipt when sent by a National Post Office (for dispatch by registered or certified mail, postage prepaid) or by recognized express courier (all charges prepaid). All such notices shall be addressed to the Party to be notified at the address set forth below, or at such other address as such Party may designate by 10 days' advance written notice to the other Party.

If to Christian County (client):  
Attn: Phil Amtower  
100 W. Church Room 100  
Ozark, MO 645721

If to the Provider:  
John Beckwith  
PTC Laboratories  
300 Portland St., Suite. 300  
Columbia, MO 65201

With a copy to:  
Ralph Phillips  
100 W. Church Room 100  
Ozark, MO 645721

With a copy to:  
Joseph M. Gorman  
PTC Laboratories  
300 Portland St., Suite 300  
Columbia, MO 65201

- f. **Governing Law.** This Agreement shall be governed by the laws of the State of Missouri. The Parties hereby consent to personal jurisdiction of, and venue within, the state courts of the State of Missouri.
- g. **Successors and Assigns.** This Agreement and the provisions hereof shall be binding upon each of the Parties and their respective successors and assigns.

- h. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- i. **No Exclusion.** No Party, and no officer, employee, agent or contractor thereof, is currently or has in the past been suspended, excluded, or debarred from, or is otherwise ineligible to participate in, any Federal Health Care Program.
- j. **Insurance.** The Parties shall procure or utilize a self-funded program and maintain adequate policies of professional and general liability insurance, in amounts of not less than one million dollars (\$1m) per claim and three million dollars (\$3m) in the annual aggregate. In addition, each Party shall maintain property insurance and workers' compensation insurance. Upon request, each Party will furnish the other Party with evidence of such coverage. Each Party shall make reasonable business efforts to notify the other party 30 days in advance of any substantial reduction, cancellation or termination of any insurance coverage.
- k. **Entire Agreement.** This Agreement (together with all exhibits and appendices attached hereto) contains, and is intended as, a complete statement of all of the terms of this Agreement between the Parties with respect to the matters provided for herein and supersedes any previous agreements and understandings (whether written or oral) between the parties. Any Exhibits attached to this Agreement shall be deemed part of this Agreement and incorporated as if fully set forth herein.
- l. **Healthcare Disclosures.** Both Parties acknowledge and agree that as healthcare companies, and notwithstanding anything in this Agreement to the contrary, the Parties, and their affiliates, may be required by applicable law and regulation ("**Healthcare Laws**") to disclose the existence of this Agreement, the terms of this Agreement, including without limitation, the financial terms and the subject matter (e.g., the U.S. Sunshine Act, and state and foreign equivalents).
- m. **Survival.** The following sections of this Agreement shall survive any expiration or termination of this Agreement: 2 Fees, 3 Representations and Warranties, 4(b) accrued rights and obligations, 5(a) Indemnification and 5(c) Confidentiality, along with all payment obligations established hereunder.

***Signature Page Immediately Follows***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**Provider**

**PTC Laboratories, Inc.**

by \_\_\_\_\_

Dated: \_\_\_\_\_

Kim Gorman, President

**Client**

Christian County, Missouri

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals this 12<sup>th</sup> day of August, 2020 at Christian County, Missouri.

DATED: 8/12/2020

  
\_\_\_\_\_  
Ralph Phillips, Presiding Commissioner

DATED: 8-12-2020

  
\_\_\_\_\_  
Hosea Bilyeu, Western Commissioner

DATED: 08.12.2020

  
\_\_\_\_\_  
Mike Robertson, Eastern Commissioner



Attested By:



Kay Brown, Christian County Clerk



Auditor Certification:

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of anticipated revenue appropriated for payment of same.



Amy Dent, Christian County Auditor

APPROVED AS TO FORM:

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John W. Housley, Attorney at Law

901 St. Louis Street 20<sup>th</sup> Floor

Springfield, MO 65806

Phone: 417-866-7777

Fax: 417-866-1752

CONFIDENTIAL

**Phil**

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**From:** John Housley <JHousley@lowtherjohnson.com>  
**Sent:** Monday, August 10, 2020 4:05 PM  
**To:** Phil Amtower  
**Subject:** FW: COVID testing  
**Attachments:** Template Contract for Covid-19 Testing 040620.pdf

Phil: I have reviewed the COVID-19 testing contract you emailed to me. Although I do not typically allow agreements which obligate the county to indemnify another party, paragraph 5(a) of this contract pertaining to the county's obligation to indemnify the provider is qualified by the phrase "to the extent provided by law and without waiving sovereign immunity". This is sufficient and probably as good as we can do with respect to limiting the county's obligation to indemnify the provider.

The only changes I would suggest is to paragraph 5 (e) which requires you to write in the name and contact information for the county as the "Client".

Also paragraph 5 (J) requires the county to self-insure or have certain liability insurance available and with certain limits. Please review this paragraph and verify that we have this amount of insurance coverage for claims pertaining to this contract.

Finally, you'll need to attach the standard signature page which contains sentient lines for the county commissioners, the County Clerk and a certification of an unencumbered balance by the county auditor.

If the foregoing are accomplished, the form of the agreement would be acceptable to me.

John

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**From:** Phil  
**Sent:** Monday, August 10, 2020 3:07 PM  
**To:** John Housley <JHousley@lowtherjohnson.com>; 'Ralph Phillips' <rphillips@christiancountymo.gov>; 'Amber Bryant' <abryant@christiancountymo.gov>  
**Subject:** FW: COVID testing

Mr. Housley,

Attached you will find a blank contract with our presumptive "testing company". We intend to enter into a contract with this company to test samples of residents of Christian County who fall within the "vulnerable" category.

This contract is solely for the collected samples to be tested. We will enter into a separate contract with Cox Hospital to collect the samples at a temporary test site here in the county....of which we have yet to find a sample....

Can you please look this over and approve / make changes so we can proceed with testing?

Thank you!

Phil Amtower, Director  
Christian County Emergency Management  
100 W. Church Room 100  
Ozark, MO 65721