



700 W HILLSBORO BLVD. BLDG 3 | DEERFIELD BEACH FL 33441 | 954 426 5163

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is entered into this day 1 of July, 2024 (the "Effective Date"), by and between DNA Labs International ("DLI"), and Lexington-Fayette Urban County Government ("Client"). DLI and Client may be alternately referred to herein as "party," individually, and "parties," collectively.

ARTICLE I - PURPOSE:

Client desires to engage DLI to render certain professional Services and Deliverables, as those terms are hereafter defined; and DLI desires to render such Services and Deliverables under the terms and conditions of this Agreement. The client's first year budget is \$150,000, which is not a work guarantee. The term "Services" means those forensic DNA Services, and other related Services that Client may request, and DLI may agree to provide from time to time. The term "Deliverables" means any Case Report or other material that Client may request and DLI may agree to provide from time to time. The parties have determined that the Services required by Client will vary in scope, Deliverables, requested personnel and performance period, and that such Services may occur from time to time, at Client's request, throughout the term of this Agreement. To accommodate each request for Services, Client will issue to DLI a completed "Case Submission Form" that will identify in detail each expected service request and the associated requirements. A DLI sample case submission form is attached as Exhibit A for your reference.

ARTICLE II - PAYMENT AND OTHER EXPENSES:

2.1 The products/services provided under this Agreement shall be subject to the terms and conditions set forth in this agreement.

This clause shall be applicable to all task orders, delivery orders, and modifications issued under this contract.

By signing this contract, the Contractor certifies their understanding and acceptance of the terms and conditions within this agreement.

2.1 Prices are defined in the attached hereto as Exhibit B and may be modified at any time during the contract term. Case Submission Forms submitted to DLI must reference the corresponding agency case number. Client agrees to pay DLI the total amount specified for the performance of the Services described in a Case Submission Form. Unless otherwise indicated, prices do not include travel or shipping.

2.2 DLI will be paid the amount as specified in this Agreement for the Services provided. DLI will invoice Client for the Services based on the testing services performed. The invoice will contain a reasonable and



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sufficient explanation or itemization of the Services rendered under an associated Case Submission Form. Client will pay DLI within thirty (30) days of the date of DLI's invoice unless otherwise agreed to.

2.3 DLI reserves the right to assess a late fee equal to one and one-half percent (1.5%) per month or, if lower, the maximum amount permitted by applicable law, on all amounts not paid when due, calculated on a daily basis beginning with the first day following the invoice due date. Any check or remittance received from or for the account of Client may be accepted and applied by DLI against any indebtedness owing by Client, without prejudice to, or the discharge of, the remainder of any such indebtedness regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying any check or remittance.

2.4 If Client desires to change or modify the Services in any Case Submission Form, Client will so advise DLI, in writing. If such a change or modification appears to substantially change the Services as recited in a Case Submission Form, upon request, DLI can issue an updated estimate for testing costs. The estimated costs for a case may change depending on the analyst's testing suggestions.

2.5 DLI will provide Discovery request responses and Expert Witness Testimony per the fee schedule on Exhibit B. Client and/or the Attorney's office requesting the services are responsible for travel arrangements, costs and testimony fees. Payment is due within net 15 days.

2.5 Unless otherwise provided in this Agreement, Client will not be liable for any other expenses, costs or fees incurred by DLI in the performance of Services under a Case Submission Form other than those specifically identified herein or therein.

ARTICLE III - TERM:

3.1 The "Term" of this Agreement will be for a period of two (2) year from the Effective Date, unless earlier terminated under the termination provisions of Article VIII.

3.2 The parties may extend, upon mutual written agreement, the Term of this Agreement for two (2), two-year extension periods, as mutually determined by the parties, under the same terms and conditions as recited herein however Exhibit B may be modified.

3.3 It is understood by the parties that a Case Submission Form or service request may be terminated independently of this Agreement, and that termination of one or more Case Submission Forms or service requests does not result in the termination of this Agreement unless this Agreement is terminated as specified in Article VIII.

ARTICLE IV – SCOPE OF WORK, SHIPMENT AND DELIVERY:

4.1 Except as otherwise provided in this Agreement, Client will bear all shipping and transport expenses.



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4.2 Scope of Work and Case Submission and Reporting.

- All testing directions are contained in the Case Submission Form submitted by the client. The detailed testing requirements must be comprehensively described on the Case Submission Form.
- A hard copy of the Case Submission Form is included with the evidence shipment. A copy of the Case Submission Form is also emailed to: evidence@dnalabsinternational.com, prior to the evidence being shipped to DLI.
- All testing is performed in our Deerfield Beach Laboratory. STR (Short Tandem Repeat) amplification of samples shall be tested using the PowerPlex Fusion 5C. Amplified samples shall be analyzed using the ABI 3500 or 3500XL Genetic Analyzer and the data shall be evaluated with Genemapper ID-X software.
- Y-STR and Genealogy testing can be requested on a case-by-case basis.
- Consumption orders are required to be issued by the Client for any evidence where permission is given to consume the sample for testing. This must be in place before the case evidence is shipped to DLI. This is a specific Client Requirement.
- Except for Reference Standards/Buccals, each item of evidence incurs an Accessioning/Serology fee and a DNA testing fee.
- Extracts may be consumed at amplification (if necessary). Extracts will be dried down.
- STRmix will not be used on samples for CODIS upload. If a manual deduction cannot be performed and only STRmix can be used, then DLI is approved to use STRmix on the sample.
- Testing time is 60-90 days. Larger or more complicated cases may take longer.
- The court-admissible report will be emailed to the Authorized Points of Contact on Page 1 of the Case Submission Form.
- Any CODIS-eligible profile data will be sent to the Kentucky State Police Laboratory for review and possible upload to CODIS.
- Evidence will be returned when testing is completed and the report has been issued. Extracts will be dried down. The Client may request evidence to be returned quicker on a case-by-case basis.

ARTICLE V- DLI'S REPORTING, DELIVERABLES, AND ENGAGEMENT OF SUBCONTRACTORS:

5.1 DLI will report to Client's Point of Contract, which will be identified in writing to DLI via the Case Submission Form.

5.2 DLI will provide the Client the Deliverables based on a schedule of a 60-90 day testing time. Exceptions can be made for larger or more complicated cases, with the Clients preapproval. If the Client requires any other items, material, devices, documents, data, analysis or reports which will be considered additional Deliverables.

ARTICLE VI -CONFIDENTIAL AND/OR PROPRIETARY INFORMATION:



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6.1 All non-public, confidential, or proprietary information of the parties ("Confidential Information"), including but not limited to specifications, samples, designs, plans, drawings, documents, data, business operations, customer lists, pricing, manuals, discounts or rebates, that the disclosing party discloses to the receiving party, whether disclosed orally or disclosed or accessed in written electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, the Deliverables, or the Services, and may not be disclosed or copied unless authorized in advance by the disclosing party in writing. Upon the disclosing party's request, the receiving party will promptly return all documents and other materials received from the disclosing party. The disclosing party will be entitled to injunctive relief for any violation of this Article VI, without having to post bond or establish the insufficiency of a remedy at law.

6.2 In the event the receiving party or anyone to whom the receiving party supplies the Confidential Information receives a request under the terms of a subpoena or order issued by, or in conjunction with litigation pending in, a court of competent jurisdiction or a governmental body, to disclose all or any part of the Confidential Information, the receiving party agrees, to the extent lawful, to (i) promptly notify the disclosing party of the existence, terms, and circumstances surrounding the request; (ii) cooperate and consult with the disclosing party on the advisability of taking legal steps to resist, narrow the scope of, or limit the disclosure of such Confidential Information; (iii) if disclosure of such Confidential Information is required, furnish only that portion of the Confidential Information that, in the opinion of its counsel, the receiving party is required to disclose; and (iv) use its best efforts to enable the disclosing party, at its own expense, to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information that the disclosing party so identifies.

6.3 This Article VI does not apply to information that is: (i) in the public domain; (ii) known to the receiving party at the time of disclosure; or (iii) rightfully obtained by the receiving party on a non-confidential basis from a third party.

ARTICLE VII - INTELLECTUAL PROPERTY/ ACKNOWLEDGMENTS:

7.1 Intellectual Property is defined as any of DLI's Confidential Information as well as ideas, concepts, know-how, techniques, methods, processes, research, developments, software, in whatever form, documents, apparatus, devices, work products or expressions, having either patent, copyright, trade secret, mask work or any other proprietary right, whether statutory or common law, associated therewith, which are developed, created or generated by DLI, either solely or jointly, during the Term of this Agreement and/or in the performance of Services under each Case Submission Form, and/or which arise under or relate to DLI's Confidential Information.

7.2 In the event that Intellectual Property is created, is generated, arose under, is related to or resulted from, as described above in Paragraph 7.1, Client acknowledges that the Intellectual Property, therein or associated therewith, will be held by, vested in and owned entirely by DLI. Client will execute, without



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additional consideration, all documents reasonably required to confirm DLI's ownership of such Intellectual Property and to secure protection thereon for DLI. Client acknowledges that this Agreement and the Services rendered under any Case Submission Form will not be construed as a "work for hire" or, in the alternative, as applicable, the generation and/or development of a work product will not be solely for the benefit and ownership of Client. Further, all associated and underlying Intellectual Property in any and all work products will solely vest in and be for the benefit and ownership of DLI; and as a result Client hereby assigns, transfers and conveys all rights, title and interests therein from Client to DLI, and this document will be considered to confirm such assignment, transfer and conveyance. In the event Client is unavailable or uncooperative after exercising reasonable efforts to obtain Client's signature to execute such additional required documents to confirm assignment, transfer and conveyance of the foregoing Intellectual Property, Client appoints DLI as its agent for the purpose of effectuating such confirmation of ownership and transfer of right, title and interest described herein, and to execute documents on behalf of Client to confirm such assignment, transfer and conveyance.

7.3 The Deliverables as described in the Case Submission Form will be delivered to Client subject to Article XIII, and Client will not in any way or manner, either by the inclusion of a corporate name, logo, copyright, marking, trademark or the like, in combination or otherwise, indicate that Client is the source, creator, generator or originator of any such Confidential Information related to the Confidential Information, Deliverables or holder or owner of associated Intellectual Property.

7.4 The parties acknowledge that in the event the Deliverables contemplate significant and material development work, the parties will describe in more detail the obligations associated therewith under a Case Submission Form. Also, the need for applicable separate agreements, such as support and maintenance for the development once completed will be provided apart from this Agreement.

ARTICLE VIII -TERMINATION:

8.1 This Agreement may be terminated, with or without cause, by either party with ninety (90) days prior written notice to the other party. Payments will be owed by Client to DLI for Services rendered under all validly executed and in-progress Case Submission Forms after the date of termination. DLI will be permitted to wind up any work in progress up to thirty (30) days following the date of termination.

8.2 In the event of termination of this Agreement either as provided herein or upon expiration of this Agreement: (i) all Services will terminate thirty (30) days following the date of termination; (ii) the receiving party will promptly return all copies of Confidential Information to the disclosing party; (iii) any Deliverables, in progress, whether or not complete, will be delivered, subject to the license provisions as recited under Article VII, Paragraph 7.4 and Article XIII, by DLI to Client if all amounts due and payable have been paid to DLI as provided hereunder; and (iv) DLI will submit a final invoice and receive payment as provided for under any and all Case Submission Forms validly executed and in-progress in accordance with Article II.



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8.3 Individual Case Submission Forms may be terminated without terminating this Agreement based on the discretion of each party relative to the Services rendered under a particular Case Submission Form, subject to the obligations recited under Paragraph 8.2. There may be a termination fee for cases submitted for testing, and then terminated.

8.4 In the event a party breaches this Agreement, the aggrieved party will provide written notice of such breach (identifying the nature of the breach) to the breaching party and the breaching party will have a reasonable opportunity to cure (not to exceed ten (10) days) such breach to the non-breaching party's reasonable satisfaction. In the event the breach is not promptly cured, then either party may elect to terminate the Agreement immediately.

ARTICLE IX - USE OF NAMES/NON-SOLICITATION:

9.1 During the Term and following the termination of this Agreement, neither party will use the name of the other party, or the name of any of its subsidiaries or affiliated entities, in any advertising, literature or other publication material or as a reference unless the party seeking to do so seeks written permission from the other party, except that DLI may list Client on its customer list in any marketing materials, and collaterals and in any advertising medium. In addition, neither party will refer to any employee of the other without written permission to do so from the other party. This Paragraph 9.1 will survive termination of this Agreement.

9.2 Neither party will, directly or indirectly, solicit for employment, or advise or recommend to any other person that they solicit for employment, any employee or consultant of the other, who was connected with this Agreement or the Services specified in any and all such Case Submission Forms, during the Term of this Agreement and for a period of one (1) year after termination and/or expiration of this Agreement.

ARTICLE X- WARRANTIES/ACCEPTANCE:

10.1 DLI represents and warrants to Client that it is an independent contractor that makes its services available to the general public, that it has its own regular place of business and that it maintains its own set of books and records, which reflect all items of income and expense of its business and trade. DLI will operate as an independent contractor and will not represent itself to be the agent, employee, partner or joint venturer of Client, nor will Client represent itself to be the agent, employee, partner or joint venturer of DLI. Neither party will obligate the other party in any manner, nor cause the other party to be liable under any contract or under any other type of commitment.

10.2 DLI represents and warrants that the Services performed in connection with each Case Submission Form issued hereunder will be of a professional quality.



10.3 DLI represents and warrants that the Deliverables developed, created and provided under the Case Submission Forms will be original works, and that any third-party material that is included in any such Deliverables will be provided to Client with the same rights as provided under such third party obligations, and DLI will not grant any greater rights than provided by such third party.

10.4 EXCEPT WHERE OTHERWISE STATED, THE DELIVERABLES ARE PROVIDED "AS IS." DLI MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY THAT ANY USE OF THE PRODUCTS OR SERVICES WILL NOT VIOLATE OR INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES WITH RESPECT TO THE DELIVERABLES OR SERVICES. DLI MAKES NO WARRANTY THAT THE DELIVERABLES WILL MEET CLIENT'S REQUIREMENTS, RESULT IN ANY CONTEMPLATED BUSINESS OR FINANCIAL RESULT, BE SECURE FROM ANY DATA BREACHES OR OPERATE UNDER CLIENT'S SPECIFIC CONDITIONS OF USE. DLI MAKES NO WARRANTY THAT OPERATION OF THE DELIVERABLE WILL BE SECURE, FREE OF MALICIOUS CODE, VIRUSES, ERROR FREE, BUG FREE OR FREE FROM INTERRUPTION. CLIENT MUST DETERMINE WHETHER THE DELIVERABLE SUFFICIENTLY MEETS CLIENT'S REQUIREMENTS FOR SECURITY AND UNINTERRUPTABILITY. CLIENT WILL BEAR SOLE RESPONSIBILITY AND ALL LIABILITY FOR ANY LOSS INCURRED DUE TO FAILURE OF THE DELIVERABLE TO MEET CLIENT'S REQUIREMENTS. DLI WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR THE LOSS OF DATA ON ANY COMPUTER OR INFORMATION STORAGE DEVICE THAT UTILIZES OR ACCESSES THE DELIVERABLES.

10.6 Client agrees that DLI's sole liability, and Client's sole and exclusive remedy for breach of the limited warranty contained in this Article X, pursuant to any claim of any kind against DLI will be, at DLI's option, (a) reperformance of any non-conforming Services or (b) a refund of the price allocable to the non-conforming Deliverables or Services.

ARTICLE XI - LIMITATION OF LIABILITY AND REMEDY:

11.1 DLI represents and warrants that the Services performed in connection with each Case Submission Form issued hereunder will be of a professional quality.

11.2 IN NO EVENT WILL DLI'S AGGREGATE LIABILITY UNDER OR AS A RESULT OF THIS AGREEMENT AND/OR CLIENT'S USE OR INABILITY TO USE THE DELIVERABLES OR SERVICES, WHETHER UNDER CONTRACT, NEGLIGENCE, TORT, INDEMNITY, WARRANTY, STRICT LIABILITY OR ANY OTHER BASIS EXCEED THE LESSER OF (I) THE COST OF CORRECTING ANY NON-CONFORMITIES IN THE DELIVERABLES OR SERVICES OR (II) THE COST OF REPLACING THE DELIVERABLES OR REPERFORMING THE SERVICES. IN NO EVENT (INCLUDING UNENFORCEABILITY OF THE ABOVE LIMITATIONS AND INDEPENDENT OF ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED WARRANTY AND REMEDIES PROVIDED HEREUNDER) WILL DLI'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE PREVIOUSLY PAID BY CLIENT FOR THE NON-CONFORMING DELIVERABLES OR SERVICES:



11.3 With regard to proprietary and/or Confidential Information and rights and interests, DLI will be entitled to pursue any legal and/or equitable action, including injunctive relief and damages, against Client with regard to any misuse, misappropriation or breach of any term or condition recited herein with regard to DLI's confidential and/or proprietary claims, including Confidential Information and Intellectual Property or third party proprietary interests. IN NO EVENT, HOWEVER, WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES ARISING FROM THE PERFORMANCE OF THE SERVICES UNDER ANY CASE SUBMISSION FORM, OR THE OBLIGATIONS RECITED IN THIS AGREEMENT OR ANY CASE SUBMISSION FORM, EXCEPT WITH RESPECT TO DAMAGES INCURRED WITH REGARD TO CLAIMS OF MISUSE OR MISAPPROPRIATION OF DLI'S PROPRIETARY AND/OR CONFIDENTIAL INFORMATION, INCLUDING CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY OR THIRD PARTY PROPRIETARY INTERESTS.

11.4 The parties acknowledge that the limitations set forth in this Article XI are integral to the prices charged under this Agreement and that, were DLI to assume any further liability other than as set forth herein, such prices would of necessity be set substantially higher. DLI's entire liability hereunder for the breach of this Agreement or any individual Case Submission Form will be limited only to actual and provable damages up to the amounts of monies payable hereunder or thereunder to DLI. Client expressly agrees that this limitation of damages and remedies will constitute the exclusive remedies and measure of damages available to Client and all other remedies and measures of damages which might otherwise be available under the law of any jurisdiction are hereby waived by Client.

11.5 Without limitation to the generality of the foregoing, DLI will not be liable for any damage or loss caused by the improper or unapproved use of the Deliverables provided hereunder.

ARTICLE XII - INDEMNIFICATION:

12.1 To the extent allowable by law, the Client will defend, indemnify, and hold harmless DLI and its respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("Claims") arising out of or occurring in connection with the negligence or willful misconduct of Client or its employees or agents, including but not limited to: (i) any misuse or modification of the Deliverables or Services by Client or its employees or agents, (ii) any act (or failure to act) by Client or its employees or agents in contravention of any safety procedures or instructions that DLI provides to Client or its employees or agents or (iii) the failure to store, install, operate, or maintain the products in accordance with the instructions of DLI. This shall not be deemed a waiver of sovereign immunity of any other third-party defense available to Client.

12.2 To the extent allowable by law, the Client will defend, indemnify and hold DLI harmless from any Claims by a third party of liability, loss or damage resulting from claims of tort, contract, negligence or any other cause of action from a third party as a result of DLI's activities with respect to the provision of



Services hereunder or the breach of any representations, warranties, covenants, agreements or other obligations hereunder, or the use of third party products or Services as provided by Client, or Services or violation of local laws and regulations in connection with its business operations or any with applicable local laws and regulations in connection with its business operations or any non-compliance with local, federal or international laws. This shall not be deemed a waiver of sovereign immunity of any other third-party defense available to Client.

ARTICLE XIII - NO LICENSE:

13.1 Unless otherwise set forth in this Agreement, the sale of any Deliverables or rendering of Services will not confer upon Client any license, express or implied, under any patents, trademarks, trade name or other proprietary rights owned or controlled by DLI; it being specifically understood and agreed that all such rights are reserved to DLI.

ARTICLE XIV - OTHER:

14.1 The parties will comply with all applicable laws, rules, and regulations.

14.2 Neither party will be deemed to have breached this Agreement by reason of delay or failure in performance resulting from causes beyond the control, and without the fault or negligence, of the party. Such causes include, but may not be limited to, an act of God, an act of war, riot, epidemic, fire, flood or other disaster. This Agreement will terminate, as provided under Article VIII, if such delay or failure persists for thirty (30) consecutive days and there is no foreseeable remedy or cure available.

14.3 With regard to the subject matter recited herein, this Agreement, any exhibits, any agreements referenced herein, and any addenda or amendments added hereto, comprise the entire understanding of the parties hereto and as such supersedes any oral or written agreement. In the event of a conflict between this Agreement and any other written agreement between the parties specifically covering the same Services or Deliverables, the terms and conditions of such agreement will prevail to the extent of such conflict. A conflict between the terms set forth herein and those set forth in a written Case Submission Form will be resolved in favor of the Case Submission Form. Notwithstanding the above, this Agreement will prevail over any differing or additional terms and conditions proposed by Client, including, without limitation, those contained in any invoice.

14.4 This Agreement will not be modified or amended except in writing signed by both parties. The signatories below acknowledge that the signatories are authorized to bind each party. All requirements for notices hereunder must be in writing. The parties further acknowledge that facsimile signatures or signatures in PDF format are fully binding and constitute a legal method of executing this Agreement.

14.5 If any of the provisions of this Agreement are declared to be invalid, such provisions will be severed from this Agreement and the other provisions hereof will remain in full force and effect.



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14.6 Neither party will transfer, assign or hypothecate, in whole or in part, this Agreement or any rights or obligations hereunder, provided that DLI may hire or engage one or more subcontractors to perform certain Services pursuant to Paragraph 5.3 herein. In the event of any permitted assignment or transfer of this Agreement or the obligations under this Agreement, the parties agree that such obligations will be binding upon the assigning or transferring party's executors, administrators and legal representatives, and the rights of the assignor or transferor will inure to the benefit of assignee or transferee.

14.7 Client warrants that all access to and users of the Deliverables are authorized users of Client.

14.8 The Agreement may be executed in one or more counterparts, each of which will be deemed to be a duplicate original, but all of which, taken together, will be deemed to constitute a single instrument.

14.9 This Agreement is governed by and construed and interpreted in accordance with the laws of the Commonwealth of Kentucky without regard to choice of law rules. Any claim or dispute associated with or arising out of this Agreement will be resolved exclusively by a state court located in Kentucky. The parties agree to submit to a court competent jurisdiction in Fayette County Kentucky for the aforementioned courts for the purpose of litigating all such disputes. The parties waive any objection to the laying of venue for any suit, action, or proceeding in such courts. The substantially prevailing party in any action will be entitled to recover its costs and attorneys' fees.

14.10 **NOTICES** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to DLI at:

To VENDOR at:

DNA Labs International

700 W. Hillsboro Blvd., Bldg. 3, Deerfield Beach, FL 33441

Attn: Contract Department

954-426-5163

contracts@dnalabsinternational.com

Invoice Questions to:

accounting@dnalabsinternational.com

Court-related requests:

court@dnalabsinternational.com

To CLIENT at:

Lexington-Fayette Urban County Government

200 East Main Street

Lexington, KY 40507

Attn: Mayor Linda Gorton

859-258-3600

Lexington-Fayette Urban County Government



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Finance/Invoice Contact

Name: _____

Phone: _____

Email to send Invoices: _____

Accepted and agreed to by the duly authorized signatories below:

DLI

Allison Nunes
Name

Signature

President & Lab Director
Title

2-13-2024
Date

Client – Lexington-Fayette Urban County Government

Mayor Linda Gorton
Name

Linda Gorton
Signature

MAYOR
Title

7/3/2024
Date

RESOLUTION NO. 364 – 2024

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, FOR THE DIVISION OF POLICE, TO EXECUTE A MASTER SERVICES AGREEMENT AND FORENSICS DNA CONTRACT WITH DNA LABS INTERNATIONAL (DLI), A SOLE SOURCE PROVIDER, FOR THE USE OF SECURE SERVICES THAT WILL DIRECTLY SUPPORT INVESTIGATIONS SPECIFIC TO UNSOLVED HOMICIDE AND VIOLENT CRIME INVESTIGATIONS, AT A COST NOT TO EXCEED \$150,000.00 IN FY 2024.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Mayor, on behalf of the Lexington-Fayette Urban County Government, the Division of Police, be and hereby is authorized to execute a Master Services Agreement and Forensics DNA Contract with DNA Labs International, a sole source provider, for the use of secure services that will directly support investigations specific to unsolved homicide and violent crime investigations.

Section 2 – That an amount, not to exceed the sum of \$150,000.00 in FY 2024 be and hereby is approved for payment to DNA Labs International, from account # 1101-505506-71299.

Section 3 – This Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 2, 2024



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

0684-24:CWE-4895-9296-9163, v. 1



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R. 364.2024

C. 176.2024

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2.5 Unless otherwise provided in this Agreement, Client will not be liable for any other expenses, costs or fees incurred by DLI in the performance of Services under a Case Submission Form other than those specifically identified herein or therein.

ARTICLE III - TERM:

3.1 The "Term" of this Agreement will be for a period of two (2) year from the Effective Date, unless earlier terminated under the termination provisions of Article VIII.

3.2 The parties may extend, upon mutual written agreement, the Term of this Agreement for two (2), two-year extension periods, as mutually determined by the parties, under the same terms and conditions as recited herein however Exhibit B may be modified.

3.3 It is understood by the parties that a Case Submission Form or service request may be terminated independently of this Agreement, and that termination of one or more Case Submission Forms or service requests does not result in the termination of this Agreement unless this Agreement is terminated as specified in Article VIII.

ARTICLE IV – SCOPE OF WORK, SHIPMENT AND DELIVERY:

4.1 Except as otherwise provided in this Agreement, Client will bear all shipping and transport expenses.



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4.2 Scope of Work and Case Submission and Reporting.

- All testing directions are contained in the Case Submission Form submitted by the client. The detailed testing requirements must be comprehensively described on the Case Submission Form.
- A hard copy of the Case Submission Form is included with the evidence shipment. A copy of the Case Submission Form is also emailed to: evidence@dnalabsinternational.com, prior to the evidence being shipped to DLI.
- All testing is performed in our Deerfield Beach Laboratory. STR (Short Tandem Repeat) amplification of samples shall be tested using the PowerPlex Fusion 5C. Amplified samples shall be analyzed using the ABI 3500 or 3500XL Genetic Analyzer and the data shall be evaluated with Genemapper ID-X software.
- Y-STR and Genealogy testing can be requested on a case-by-case basis.
- Consumption orders are required to be issued by the Client for any evidence where permission is given to consume the sample for testing. This must be in place before the case evidence is shipped to DLI. This is a specific Client Requirement.
- Except for Reference Standards/Buccals, each item of evidence incurs an Accessioning/Serology fee and a DNA testing fee.
- Extracts may be consumed at amplification (if necessary). Extracts will be dried down.
- STRmix will not be used on samples for CODIS upload. If a manual deduction cannot be performed and only STRmix can be used, then DLI is approved to use STRmix on the sample.
- Testing time is 60-90 days. Larger or more complicated cases may take longer.
- The court-admissible report will be emailed to the Authorized Points of Contact on Page 1 of the Case Submission Form.
- Any CODIS-eligible profile data will be sent to the Kentucky State Police Laboratory for review and possible upload to CODIS.
- Evidence will be returned when testing is completed and the report has been issued. Extracts will be dried down. The Client may request evidence to be returned quicker on a case-by-case basis.

ARTICLE V- DLI'S REPORTING, DELIVERABLES, AND ENGAGEMENT OF SUBCONTRACTORS:

5.1 DLI will report to Client's Point of Contract, which will be identified in writing to DLI via the Case Submission Form.

5.2 DLI will provide the Client the Deliverables based on a schedule of a 60-90 day testing time. Exceptions can be made for larger or more complicated cases, with the Clients preapproval. If the Client requires any other items, material, devices, documents, data, analysis or reports which will be considered additional Deliverables.

ARTICLE VI -CONFIDENTIAL AND/OR PROPRIETARY INFORMATION:



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6.1 All non-public, confidential, or proprietary information of the parties ("Confidential Information"), including but not limited to specifications, samples, designs, plans, drawings, documents, data, business operations, customer lists, pricing, manuals, discounts or rebates, that the disclosing party discloses to the receiving party, whether disclosed orally or disclosed or accessed in written electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the Agreement, the Deliverables, or the Services, and may not be disclosed or copied unless authorized in advance by the disclosing party in writing. Upon the disclosing party's request, the receiving party will promptly return all documents and other materials received from the disclosing party. The disclosing party will be entitled to injunctive relief for any violation of this Article VI, without having to post bond or establish the insufficiency of a remedy at law.

6.2 In the event the receiving party or anyone to whom the receiving party supplies the Confidential Information receives a request under the terms of a subpoena or order issued by, or in conjunction with litigation pending in, a court of competent jurisdiction or a governmental body, to disclose all or any part of the Confidential Information, the receiving party agrees, to the extent lawful, to (i) promptly notify the disclosing party of the existence, terms, and circumstances surrounding the request; (ii) cooperate and consult with the disclosing party on the advisability of taking legal steps to resist, narrow the scope of, or limit the disclosure of such Confidential Information; (iii) if disclosure of such Confidential Information is required, furnish only that portion of the Confidential Information that, in the opinion of its counsel, the receiving party is required to disclose; and (iv) use its best efforts to enable the disclosing party, at its own expense, to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information that the disclosing party so identifies.

6.3 This Article VI does not apply to information that is: (i) in the public domain; (ii) known to the receiving party at the time of disclosure; or (iii) rightfully obtained by the receiving party on a non-confidential basis from a third party.

ARTICLE VII - INTELLECTUAL PROPERTY/ ACKNOWLEDGMENTS:

7.1 Intellectual Property is defined as any of DLI's Confidential Information as well as ideas, concepts, know-how, techniques, methods, processes, research, developments, software, in whatever form, documents, apparatus, devices, work products or expressions, having either patent, copyright, trade secret, mask work or any other proprietary right, whether statutory or common law, associated therewith, which are developed, created or generated by DLI, either solely or jointly, during the Term of this Agreement and/or in the performance of Services under each Case Submission Form, and/or which arise under or relate to DLI's Confidential Information.

7.2 In the event that Intellectual Property is created, is generated, arose under, is related to or resulted from, as described above in Paragraph 7.1, Client acknowledges that the Intellectual Property, therein or associated therewith, will be held by, vested in and owned entirely by DLI. Client will execute, without



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additional consideration, all documents reasonably required to confirm DLI's ownership of such Intellectual Property and to secure protection thereon for DLI. Client acknowledges that this Agreement and the Services rendered under any Case Submission Form will not be construed as a "work for hire" or, in the alternative, as applicable, the generation and/or development of a work product will not be solely for the benefit and ownership of Client. Further, all associated and underlying Intellectual Property in any and all work products will solely vest in and be for the benefit and ownership of DLI; and as a result Client hereby assigns, transfers and conveys all rights, title and interests therein from Client to DLI, and this document will be considered to confirm such assignment, transfer and conveyance. In the event Client is unavailable or uncooperative after exercising reasonable efforts to obtain Client's signature to execute such additional required documents to confirm assignment, transfer and conveyance of the foregoing Intellectual Property, Client appoints DLI as its agent for the purpose of effectuating such confirmation of ownership and transfer of right, title and interest described herein, and to execute documents on behalf of Client to confirm such assignment, transfer and conveyance.

7.3 The Deliverables as described in the Case Submission Form will be delivered to Client subject to Article XIII, and Client will not in any way or manner, either by the inclusion of a corporate name, logo, copyright, marking, trademark or the like, in combination or otherwise, indicate that Client is the source, creator, generator or originator of any such Confidential Information related to the Confidential Information, Deliverables or holder or owner of associated Intellectual Property.

7.4 The parties acknowledge that in the event the Deliverables contemplate significant and material development work, the parties will describe in more detail the obligations associated therewith under a Case Submission Form. Also, the need for applicable separate agreements, such as support and maintenance for the development once completed will be provided apart from this Agreement.

ARTICLE VIII -TERMINATION:

8.1 This Agreement may be terminated, with or without cause, by either party with ninety (90) days prior written notice to the other party. Payments will be owed by Client to DLI for Services rendered under all validly executed and in-progress Case Submission Forms after the date of termination. DLI will be permitted to wind up any work in progress up to thirty (30) days following the date of termination.

8.2 In the event of termination of this Agreement either as provided herein or upon expiration of this Agreement: (i) all Services will terminate thirty (30) days following the date of termination; (ii) the receiving party will promptly return all copies of Confidential Information to the disclosing party; (iii) any Deliverables, in progress, whether or not complete, will be delivered, subject to the license provisions as recited under Article VII, Paragraph 7.4 and Article XIII, by DLI to Client if all amounts due and payable have been paid to DLI as provided hereunder; and (iv) DLI will submit a final invoice and receive payment as provided for under any and all Case Submission Forms validly executed and in-progress in accordance with Article II.



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8.3 Individual Case Submission Forms may be terminated without terminating this Agreement based on the discretion of each party relative to the Services rendered under a particular Case Submission Form, subject to the obligations recited under Paragraph 8.2. There may be a termination fee for cases submitted for testing, and then terminated.

8.4 In the event a party breaches this Agreement, the aggrieved party will provide written notice of such breach (identifying the nature of the breach) to the breaching party and the breaching party will have a reasonable opportunity to cure (not to exceed ten (10) days) such breach to the non-breaching party's reasonable satisfaction. In the event the breach is not promptly cured, then either party may elect to terminate the Agreement immediately.

ARTICLE IX - USE OF NAMES/NON-SOLICITATION:

9.1 During the Term and following the termination of this Agreement, neither party will use the name of the other party, or the name of any of its subsidiaries or affiliated entities, in any advertising, literature or other publication material or as a reference unless the party seeking to do so seeks written permission from the other party, except that DLI may list Client on its customer list in any marketing materials, and collaterals and in any advertising medium. In addition, neither party will refer to any employee of the other without written permission to do so from the other party. This Paragraph 9.1 will survive termination of this Agreement.

9.2 Neither party will, directly or indirectly, solicit for employment, or advise or recommend to any other person that they solicit for employment, any employee or consultant of the other, who was connected with this Agreement or the Services specified in any and all such Case Submission Forms, during the Term of this Agreement and for a period of one (1) year after termination and/or expiration of this Agreement.

ARTICLE X- WARRANTIES/ACCEPTANCE:

10.1 DLI represents and warrants to Client that it is an independent contractor that makes its services available to the general public, that it has its own regular place of business and that it maintains its own set of books and records, which reflect all items of income and expense of its business and trade. DLI will operate as an independent contractor and will not represent itself to be the agent, employee, partner or joint venturer of Client, nor will Client represent itself to be the agent, employee, partner or joint venturer of DLI. Neither party will obligate the other party in any manner, nor cause the other party to be liable under any contract or under any other type of commitment.

10.2 DLI represents and warrants that the Services performed in connection with each Case Submission Form issued hereunder will be of a professional quality.



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10.3 DLI represents and warrants that the Deliverables developed, created and provided under the Case Submission Forms will be original works, and that any third-party material that is included in any such Deliverables will be provided to Client with the same rights as provided under such third party obligations, and DLI will not grant any greater rights than provided by such third party.

10.4 EXCEPT WHERE OTHERWISE STATED, THE DELIVERABLES ARE PROVIDED "AS IS." DLI MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY THAT ANY USE OF THE PRODUCTS OR SERVICES WILL NOT VIOLATE OR INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES WITH RESPECT TO THE DELIVERABLES OR SERVICES. DLI MAKES NO WARRANTY THAT THE DELIVERABLES WILL MEET CLIENT'S REQUIREMENTS, RESULT IN ANY CONTEMPLATED BUSINESS OR FINANCIAL RESULT, BE SECURE FROM ANY DATA BREACHES OR OPERATE UNDER CLIENT'S SPECIFIC CONDITIONS OF USE. DLI MAKES NO WARRANTY THAT OPERATION OF THE DELIVERABLE WILL BE SECURE, FREE OF MALICIOUS CODE, VIRUSES, ERROR FREE, BUG FREE OR FREE FROM INTERRUPTION. CLIENT MUST DETERMINE WHETHER THE DELIVERABLE SUFFICIENTLY MEETS CLIENT'S REQUIREMENTS FOR SECURITY AND UNINTERRUPTABILITY. CLIENT WILL BEAR SOLE RESPONSIBILITY AND ALL LIABILITY FOR ANY LOSS INCURRED DUE TO FAILURE OF THE DELIVERABLE TO MEET CLIENT'S REQUIREMENTS. DLI WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR THE LOSS OF DATA ON ANY COMPUTER OR INFORMATION STORAGE DEVICE THAT UTILIZES OR ACCESSES THE DELIVERABLES.

10.6 Client agrees that DLI's sole liability, and Client's sole and exclusive remedy for breach of the limited warranty contained in this Article X, pursuant to any claim of any kind against DLI will be, at DLI's option, (a) reperformance of any non-conforming Services or (b) a refund of the price allocable to the non-conforming Deliverables or Services.

ARTICLE XI - LIMITATION OF LIABILITY AND REMEDY:

11.1 DLI represents and warrants that the Services performed in connection with each Case Submission Form issued hereunder will be of a professional quality.

11.2 IN NO EVENT WILL DLI'S AGGREGATE LIABILITY UNDER OR AS A RESULT OF THIS AGREEMENT AND/OR CLIENT'S USE OR INABILITY TO USE THE DELIVERABLES OR SERVICES, WHETHER UNDER CONTRACT, NEGLIGENCE, TORT, INDEMNITY, WARRANTY, STRICT LIABILITY OR ANY OTHER BASIS EXCEED THE LESSER OF (I) THE COST OF CORRECTING ANY NON-CONFORMITIES IN THE DELIVERABLES OR SERVICES OR (II) THE COST OF REPLACING THE DELIVERABLES OR REPERFORMING THE SERVICES. IN NO EVENT (INCLUDING UNENFORCEABILITY OF THE ABOVE LIMITATIONS AND INDEPENDENT OF ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED WARRANTY AND REMEDIES PROVIDED HEREUNDER) WILL DLI'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE PREVIOUSLY PAID BY CLIENT FOR THE NON-CONFORMING DELIVERABLES OR SERVICES:



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11.3 With regard to proprietary and/or Confidential Information and rights and interests, DLI will be entitled to pursue any legal and/or equitable action, including injunctive relief and damages, against Client with regard to any misuse, misappropriation or breach of any term or condition recited herein with regard to DLI's confidential and/or proprietary claims, including Confidential Information and Intellectual Property or third party proprietary interests. IN NO EVENT, HOWEVER, WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES ARISING FROM THE PERFORMANCE OF THE SERVICES UNDER ANY CASE SUBMISSION FORM, OR THE OBLIGATIONS RECITED IN THIS AGREEMENT OR ANY CASE SUBMISSION FORM, EXCEPT WITH RESPECT TO DAMAGES INCURRED WITH REGARD TO CLAIMS OF MISUSE OR MISAPPROPRIATION OF DLI'S PROPRIETARY AND/OR CONFIDENTIAL INFORMATION, INCLUDING CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY OR THIRD PARTY PROPRIETARY INTERESTS.

11.4 The parties acknowledge that the limitations set forth in this Article XI are integral to the prices charged under this Agreement and that, were DLI to assume any further liability other than as set forth herein, such prices would of necessity be set substantially higher. DLI's entire liability hereunder for the breach of this Agreement or any individual Case Submission Form will be limited only to actual and provable damages up to the amounts of monies payable hereunder or thereunder to DLI. Client expressly agrees that this limitation of damages and remedies will constitute the exclusive remedies and measure of damages available to Client and all other remedies and measures of damages which might otherwise be available under the law of any jurisdiction are hereby waived by Client.

11.5 Without limitation to the generality of the foregoing, DLI will not be liable for any damage or loss caused by the improper or unapproved use of the Deliverables provided hereunder.

ARTICLE XII - INDEMNIFICATION:

12.1 To the extent allowable by law, the Client will defend, indemnify, and hold harmless DLI and its respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("Claims") arising out of or occurring in connection with the negligence or willful misconduct of Client or its employees or agents, including but not limited to: (i) any misuse or modification of the Deliverables or Services by Client or its employees or agents, (ii) any act (or failure to act) by Client or its employees or agents in contravention of any safety procedures or instructions that DLI provides to Client or its employees or agents or (iii) the failure to store, install, operate, or maintain the products in accordance with the instructions of DLI. This shall not be deemed a waiver of sovereign immunity of any other third-party defense available to Client.

12.2 To the extent allowable by law, the Client will defend, indemnify and hold DLI harmless from any Claims by a third party of liability, loss or damage resulting from claims of tort, contract, negligence or any other cause of action from a third party as a result of DLI's activities with respect to the provision of



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Services hereunder or the breach of any representations, warranties, covenants, agreements or other obligations hereunder, or the use of third party products or Services as provided by Client, or Services or violation of local laws and regulations in connection with its business operations or any with applicable local laws and regulations in connection with its business operations or any non-compliance with local, federal or international laws. This shall not be deemed a waiver of sovereign immunity of any other third-party defense available to Client.

ARTICLE XIII - NO LICENSE:

13.1 Unless otherwise set forth in this Agreement, the sale of any Deliverables or rendering of Services will not confer upon Client any license, express or implied, under any patents, trademarks, trade name or other proprietary rights owned or controlled by DLI; it being specifically understood and agreed that all such rights are reserved to DLI.

ARTICLE XIV - OTHER:

14.1 The parties will comply with all applicable laws, rules, and regulations.

14.2 Neither party will be deemed to have breached this Agreement by reason of delay or failure in performance resulting from causes beyond the control, and without the fault or negligence, of the party. Such causes include, but may not be limited to, an act of God, an act of war, riot, epidemic, fire, flood or other disaster. This Agreement will terminate, as provided under Article VIII, if such delay or failure persists for thirty (30) consecutive days and there is no foreseeable remedy or cure available.

14.3 With regard to the subject matter recited herein, this Agreement, any exhibits, any agreements referenced herein, and any addenda or amendments added hereto, comprise the entire understanding of the parties hereto and as such supersedes any oral or written agreement. In the event of a conflict between this Agreement and any other written agreement between the parties specifically covering the same Services or Deliverables, the terms and conditions of such agreement will prevail to the extent of such conflict. A conflict between the terms set forth herein and those set forth in a written Case Submission Form will be resolved in favor of the Case Submission Form. Notwithstanding the above, this Agreement will prevail over any differing or additional terms and conditions proposed by Client, including, without limitation, those contained in any invoice.

14.4 This Agreement will not be modified or amended except in writing signed by both parties. The signatories below acknowledge that the signatories are authorized to bind each party. All requirements for notices hereunder must be in writing. The parties further acknowledge that facsimile signatures or signatures in PDF format are fully binding and constitute a legal method of executing this Agreement.

14.5 If any of the provisions of this Agreement are declared to be invalid, such provisions will be severed from this Agreement and the other provisions hereof will remain in full force and effect.



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14.6 Neither party will transfer, assign or hypothecate, in whole or in part, this Agreement or any rights or obligations hereunder, provided that DLI may hire or engage one or more subcontractors to perform certain Services pursuant to Paragraph 5.3 herein. In the event of any permitted assignment or transfer of this Agreement or the obligations under this Agreement, the parties agree that such obligations will be binding upon the assigning or transferring party's executors, administrators and legal representatives, and the rights of the assignor or transferor will inure to the benefit of assignee or transferee.

14.7 Client warrants that all access to and users of the Deliverables are authorized users of Client.

14.8 The Agreement may be executed in one or more counterparts, each of which will be deemed to be a duplicate original, but all of which, taken together, will be deemed to constitute a single instrument.

14.9 This Agreement is governed by and construed and interpreted in accordance with the laws of the Commonwealth of Kentucky without regard to choice of law rules. Any claim or dispute associated with or arising out of this Agreement will be resolved exclusively by a state court located in Kentucky. The parties agree to submit to a court competent jurisdiction in Fayette County Kentucky for the aforementioned courts for the purpose of litigating all such disputes. The parties waive any objection to the laying of venue for any suit, action, or proceeding in such courts. The substantially prevailing party in any action will be entitled to recover its costs and attorneys' fees.

14.10 NOTICES Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to DLI at:

To VENDOR at:

DNA Labs International

700 W. Hillsboro Blvd., Bldg. 3, Deerfield Beach, FL 33441

Attn: Contract Department

954-426-5163

contracts@dnalabsinternational.com

Invoice Questions to:

accounting@dnalabsinternational.com

Court-related requests:

court@dnalabsinternational.com

To CLIENT at:

Lexington-Fayette Urban County Government

200 East Main Street

Lexington, KY 40507

Attn: Mayor Linda Gorton

859-258-3600

Lexington-Fayette Urban County Government



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Finance/Invoice Contact

Name: _____

Phone: _____

Email to send Invoices: _____

Accepted and agreed to by the duly authorized signatories below:

DLI

Allison Nunes

Name

Allison Nunes

Signature

President & Lab Director

Title

2-13-2024

Date

Client – Lexington-Fayette Urban County Government

Mayor Linda Gorton

Name

Linda Gorton

Signature

MAYOR

Title

7/3/2024

Date