

SERVICES AGREEMENT

This Services Agreement (the "Agreement") is effective July 09, 2020 by and between **PINNACLE TRAINING SYSTEMS, LLC ("PTS")**, a company organized and existing under the laws of the state of California, having an office located at 6011 N Fresno St. Suite 120, Fresno, CA 93710 and the County of Fresno, a Political Subdivision of the State of California, (the "CLIENT") located at and/or having a correspondence address of: 2220 Tulare Street, 16th Floor, Fresno, CA 93721 ATTN: Risk Management. PTS and the CLIENT are at times herein collectively referred to as the "Parties," or individually, as a "Party."

RECITALS

1. The CLIENT wishes to retain PTS to provide COVID-19 Testing/Screening related to and/or described as a "COVID-19 Testing/Screening Program" on the terms and conditions hereinafter set forth.
2. PTS wishes to provide such services to the CLIENT on such terms and conditions.

NOW THEREFORE in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

- a) PTS agrees to provide to the CLIENT the COVID-19 Testing services set forth in Schedule "A," which is attached hereto and made a part of this Agreement (the "Services").
- b) PTS agrees and undertakes to perform the Services in a timely fashion with the skill, competence and diligence commensurate with the standards in the wellness industry.

2. COMPENSATION

- a) The CLIENT shall pay PTS for the Services, in accordance with the terms set forth in Schedule "B," which is attached hereto and made a part of this Agreement. In no event shall services performed under this Agreement be in excess of Two Million Six Hundred Sixty-Five Thousand Six Hundred and No/100 Dollars (\$2,665,600) during the term of this Agreement.

3. TERM AND TERMINATION

- a) The initial term of this Agreement ("Term") shall be for a period of approximately six months, beginning July 09, 2020 and ending on December 30, 2020, unless terminated earlier in accordance with the provisions herein. The Term may be extended by written agreement of the Parties.
- b) This Agreement may be terminated by either Party upon the occurrence of an event of default, given five (5) days written notice of the default to the other Party. If the default is not cured within the five-day notice period, this Agreement will terminate and any and all fees owed to PTS, up and through the termination date will be immediately due and payable. Each of the following constitutes an event of default for the purposes of this Agreement:
 - i) breach of this Agreement (including but not limited to non-performance and/or inability to perform), and
 - ii. insolvency of CLIENT or PTS (including but not limited to bankruptcy).



- c) CLIENT agrees that CLIENT may terminate this Agreement at any time for any reason giving ten (10) days written notice to PTS unless agreed upon mutually. PTS may terminate this agreement for any reason giving ten (10) days written notice to CLIENT, and CLIENT shall pay PTS for all Services rendered up and through the date of termination, in accordance with the payment terms set forth in Schedule B.
- d) Upon request at the termination of this Agreement, CLIENT shall return to PTS all confidential data embodied or recorded in tangible form, which is in its possession. CLIENT expressly grants PTS permission to use the performance results of the COVID-19 Testing/Screening Program for marketing, advertising, and/or other business purposes, so long as the identity of any individual participating in the program is not disclosed and/or cannot reasonably be determined or associated with the use or PTS obtains the written consent of the individual to disclose his or her identity.

4. STATUS

- a) It is understood and agreed that this is an agreement for the performance of services and that the relationship of the Parties to each other is that of independent contractors. This Agreement shall not be deemed to create a joint venture, partnership, principal-agent, employer-employee, or similar relationship between PTS and CLIENT.
- b) PTS and CLIENT shall comply with all applicable statutes, ordinances and regulations of the State of California and the United States governing the performance of the Services.

5. CONFIDENTIALITY

"Confidential Information" shall mean any proprietary or non-public Confidential Information or materials which are owned or controlled by the Disclosing Party, both of which are disclosed under the following terms and conditions. "Disclosing Party" shall mean the party revealing or disclosing the Confidential Information. "Recipient" shall mean the party receiving the Confidential Information.

- a) The Parties shall not disclose or divulge to any person or entity, except as provided below, any Confidential Information which either Party may reveal under this Agreement and shall not use said Confidential Information in any manner whatsoever, directly or indirectly, except as expressly permitted herein and solely in connection with the COVID-19 Testing/Screening Program. The parties shall protect the confidentiality of and take all reasonable steps to prevent disclosure or unauthorized use of the Confidential Information. All services performed by PTS under this Agreement shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality.
- b) Each Party shall have the right to disclose the Confidential Information to its officers, directors, employees, agents, subcontractors and consultants for the purposes authorized herein. Each Party shall, prior to disclosing the Confidential Information or portion thereof to any such person, issue appropriate instructions to them to ensure that such persons are aware of their obligation to comply with the confidentiality and use obligations and restrictions contained in this Agreement.
- c) The Recipient shall advise the Disclosing Party in writing in the event the Recipient becomes aware of any unauthorized dissemination, misappropriation, or misuse of Confidential Information by the Recipient and provide assistance to Disclosing Party to mitigate any damages caused thereby and to limit any further dissemination or misuse of the Confidential Information.
- d) Confidential Information shall not include any data or information which:
 - i) is now generally known or readily available to the trade or public or which becomes so known or readily available without fault of Recipient;



- ii) is possessed by Recipient without restriction as to disclosure or use prior to its disclosure hereunder;
 - iii) is received independently from a third party who is free to disclose such information to the Recipient;
 - iv) is required as part of any court order or government regulation (provided that the Disclosing Party has been given sufficient written notice of such order or regulation to contest it); or,
 - v) is developed by Recipient independent of any Confidential Information of Disclosing Party and which can be proven by written records.
- e) The provisions of paragraphs 5.a) and 5.c) above shall survive the termination of this Agreement and shall continue until the Confidential Information is no longer confidential and/or proprietary.

6. INTELLECTUAL PROPERTY

The CLIENT acknowledges that PTS has custom designed the Services based on its education and experience in the wellness industry. COVID-19 Testing/Screening Program will follow CDC guidelines and recommendations and all orders from the Fresno County Public Health Department (DPH). The CLIENT agrees that all work produced in the development of the Services and all work product which PTS produces in performing the Services, or any component thereof, including, but not limited to publications, reports and other materials prepared by PTS (whether or not copyrighted or patentable), shall be the property of PTS. The CLIENT acknowledges that all copyright, rights to patents, trade secrets or other intellectual property in all such work and in the Services are the property of PTS.

7. FORCE MAJEURE

If the performance of this agreement or any of the obligations hereunder is interfered with in whole or in part by reason of any circumstances beyond the reasonable control of PTS, including but not limited to fire, explosion, power failure, acts of God, revolution, civil commotion or acts of public enemies, any applicable law, order, regulation, ordinance or requirement of any government or legal body or labor unrest, including without limitation, strikes, slow downs, picketing or boycotts, then PTS shall be excused from such performance to extent of such interference.

8. SUBCONTRACTS

PTS shall have exclusive right and responsibility for the selection of any and all service suppliers required for the performance of the Services hereunder, except that lab partners selected by PTS for the purposes of testing shall first be approved in writing by DPH or its duly designated representative. However, no modifications to the Services, whether to be provided directly by PTS or a subcontractor, shall be made without the prior written consent of both parties (as to any such modification and/or addition), which consent shall not be unreasonably withheld.

9. INDEMNIFICATION

- a.) Each party will indemnify, defend, and hold harmless the other, its parent, subsidiary, and affiliated corporations and their respective directors, officers, employees, agents, successors, and assigns, from and against any and all claims, damages, liabilities, losses, government proceedings, and costs and expenses, including reasonable attorney fees and costs of suit, arising out of any alleged or actual breach of this Agreement or the inaccuracy of any warranty or representation made by it or any act or omission by it in the performance of this Agreement or the purposes hereof.
- b.) Each party will give the other prompt written notice of any claim or suit possibly coming within the purview of any indemnity set forth in this Agreement. Upon the written request



of an indemnitee, the indemnitor will assume the defense of any such claim, demand, action, or proceeding. The indemnitee shall also have the right to provide its own defense at its own expense, provided the indemnitee shall not settle any claim without the indemnitor's consent unless it is willing to release the indemnitor from its obligation of indemnity hereunder.

- c.) The indemnifications set forth in this Section 9 shall survive the termination of this Agreement.

10. INSURANCE

Without limiting the Client's right to obtain indemnification from PTS or any third parties, PTS, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

- a.) Commercial General Liability
- a. Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.
- b.) Automobile Liability
- a. Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.
- c.) Professional Liability
- a. If PTS employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.
- d.) Worker's Compensation
- a. A policy of Worker's Compensation insurance as may be required by the California Labor Code.

Additional Requirements Relating to Insurance

PTS shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by Client, its officers, agents and employees shall be excess only and not contributing with insurance provided under PTS's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to Client.

PTS hereby waives its right to recover from Client, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. PTS is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but PTS's waiver of subrogation under this paragraph is effective whether or not PTS obtains such an



endorsement.

Within Thirty (30) days from the date PTS signs and executes this Agreement, PTS shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Stephen Woods, 2220 Tulare Street, 16th Floor, Fresno, CA 93721, stating that such insurance coverage have been obtained and are in full force; that the Client, its officers, agents and employees will not be responsible for any premiums on the policies; that for such worker's compensation insurance PTS has waived its right to recover from the Client, its officers, agents and employees any amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under PTS's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to Client.

In the event PTS fails to keep in effect at all times insurance coverage as herein provided, the Client may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

11. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

CLIENT's Department of Human Resources – Risk Management and PTS each consider and represent themselves as covered entities as defined by the U.S. Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and agree to use and disclose protected health information as required by law. CLIENT and PROVIDER intend to protect the privacy and provide for the security of Protected Health Information (PHI) pursuant to the Agreement in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (HIPAA Regulations) and other applicable laws.

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule require PTS to enter into a contract containing specific requirements prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (CFR).

12. EXTENSION OF STATE EXCEPTION

The HIPAA Privacy Rule creates a special rule for a subset of public health activities whereby HIPAA cannot preempt state law if, "[t]he provision of state law, including state procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention." (45 C.F.R. section 160.203© [HITECH Act, section 13421, sub. (a)].)

To the extent a disclosure or use of date under this agreement may also be considered a disclosure or use of "Protected Health Information" (PHI) of an individual, as that term is defined in Section 160.103 of Title 45, Code of Federal Regulations, the following Privacy Rule provisions apply to permit such date disclosure and/or use by the parties, without the consent



or authorization of the individual who is the subject of the PHI.

HIPAA cannot preempt state law if, "[t]he provision of state law, including state procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention." (45 C.F.R. section 160.203(c) [HITECH Act, section 13421, sub. (a)].)

A covered entity may disclose PHI to a "public health authority" carrying out public health activities authorized by law; (45 C.F.R. section 164.512(b).)

A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law." (Title 45 C.F.R. sections 164.502(a)(1)(vii), 164.512(a)(1).)

13. GENERAL TERMS

- a. **Complete Agreement:** This Agreement, including Schedules "A," and "B" hereto, constitutes the entire understanding between the parties respecting the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties respecting the subject matter of this Agreement. This Agreement replaces and supersedes County Purchase Order No. P02-0000020180, effective July 9, 2020.
- b. **Modification:** Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.
- c. **Waiver:** No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly stated by the Party making such waiver.
- d. **Assignment:** Neither this Agreement nor any rights or obligations hereunder shall be assignable by any Party without the prior written consent of the other Party. This Agreement shall ensure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.
- e. **Authority:** Each Party represents and warrants in favor of the other that it has all necessary capacity and authority to enter into this Agreement and to carry out its respective obligations hereunder.
- f. **Notices:** Any notice required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered in person during normal business hours of the recipient on a business day or sent by first class mail, postage prepaid, or by facsimile as follows:

In the case of a notice to the PTS to:

Felicia Gomez
6011 N. Fresno St. Suite, #120
Fresno, CA 93710

In the case of a notice to CLIENT to:

County of Fresno

Stephen Woods



2220 Tulare Street, 16th Floor
Fresno, CA, 93721

and shall be conclusively deemed to have been given and to have been received on the following business day, if so delivered or sent by facsimile, and on the third business day following the mailing thereof, if so mailed (excluding each day during which there exists any interruption of postal services due to strike, lockout or other cause). Addresses for notice may be changed by giving notice in accordance with the foregoing. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with Section 810).

- a. **Choice of Law:** This Agreement shall be governed by the laws of the State of California, excluding its choice of law rules that may allow governance of the agreement by the laws of another state. Solely for the purposes of enforcing or interpreting this Agreement, the Parties agree to be subject to the personal jurisdiction of any court in the County of Fresno in the State of California with subject matter jurisdiction to enforce or interpret any of the provisions of this Agreement.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed on the date indicated above.

PINNACLE TRAINING SYSTEMS, LLC

Felicia Gomez
(Authorized Signature)

Felicia Gomez, Ph.D. Owner

Print Name & Title

6011 N. Fresno St Ste 120
Mailing Address Fresno CA
93710

COUNTY OF FRESNO

Ernest Buddy Mendes
Ernest Buddy Mendes, Chairman of the Board of the Board of Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By:

Susan Bishop
Deputy

FOR ACCOUNTING USE ONLY:

Fund: 1060
Subclass: 10000
ORG: 89250100
Account: 7295

SCHEDULE "A"



Pinnacle Training Systems
THE SCIENTIFIC APPROACH TO YOUR SUCCESS

THE SCIENTIFIC APPROACH TO YOUR SUCCESS
COVID-19 TESTING/SCREENING PROGRAM SERVICES

PTS shall provide the Services to the CLIENT as set forth below, upon the terms and conditions set forth in this Agreement. The CLIENT and PTS may amend this Schedule, by written agreement between the Parties, from time to time during the Term of the Agreement and/or any renewal period.

PTS shall provide the following COVID-19 Testing : (1) COVID-19 Nasal Swab Testing; and (2) Reporting as per CLIENT needs

Staff performing the nasal swab will be licensed staff within their scope of practice allowed under State law. All PTS Staff will be trained to conduct each lab-partner or DPH-provided test for SARS-COV-2 virus per test kit manufacturer instructions. Nasal swab activities and protocols will be compliant with applicable federal and state laws in relation to laboratory testing and nursing procedures.

PTS will conduct the testing at CLIENT's Main Jail, located at 1225 M Street. The testing will be administered to CLIENT's employees referred by CLIENT. The testing will also be administered to independent contractors working in the Jail upon a determination by CLIENT's Department of Human Resources – Risk Management that such testing is needed. It is estimated that 890 – 1040 people will need to be tested weekly. Due to the fluctuations of SARS-COV-2 in the community, the CLIENT may need to revise the number of weekly tests either to increase, decrease, or terminate testing. In the event that the estimated testing requirements need adjustment, the Director of Human Resources for the County of Fresno shall have the authority to adjust the estimated weekly tests required, by providing 10-days written notice to PTS. If adjustments in the estimated testing results in a change to the per test cost set forth in Schedule B, the Director of Human Resources for the County of Fresno shall have the authority to approve such change, but in no event shall the change in per test cost change the maximum dollar amount of this Agreement set forth in section 2 (Compensation) of this Agreement.

Individuals to be tested will be required to complete a lab requisition form and waiver (one time) prior to testing. PTS will collect specimens per the lab partner test kit instructions and send collected specimens to the lab for processing. Test results will be available within 2 – 4 days, subject to constraints on national testing partners due to the pandemic. In the event that testing results are delayed past 4 days, PTS will notify CLIENT's Human Resources - Risk Management and DPH as soon as a delay is suspected. PTS will relay to all partners that the congregate settings priority 2 applies to the CLIENT's Covid-19 Testing Program.

The parties will determine the most cost-effective method for reporting in compliance with HIPAA and privacy guidelines. PTS shall report to CLIENT all negative results within 24 hours of receipt and all positive results within 2 hours of receipt. Any individual testing positive will be called by PTS immediately and informed of their result with verbal self-isolation instructions. A confidential email will be sent with official results and the FRI Isolation packet as mandated by the Fresno County Public Health Department. All relevant personnel will be notified by telephone/email. The County of Fresno COVID-19 & Febrile Respiratory Illness Provider Form Portal will be used to notify the County (unless other processes are mandated). Results will be transmitted to the following entities by a method mutually agreeable to PTS and the organization(s) receiving the reports: County of Fresno Human Resources – Risk Management, County of Fresno Sheriff – Human Resources, and designated medical and worker's compensation providers contracted with the County of Fresno.



**SCHEDULE "B"
PAYMENT**

In consideration of the Services provided by PTS, the CLIENT shall pay PTS in accordance with the terms set forth below. The CLIENT and PTS may amend this Schedule, by written agreement between the Parties, from time to time during the Term and/or any renewal period.

- a.) Services incurred on one week will be reported to the County of Fresno by the following Monday.
 - a. PTS understands that because of fund-reporting requirements all incurred tests in a given month must be reported on the first day following the close of the month.
- b.) Services will be billed monthly for those rendered. Payment will be due 45 days after receipt of invoice.

Service	Unit Cost
COVID-19 Testing	\$140/person

- a.) The cost outlined above includes all staff qualified to provide this type of testing, screening, PPE, data collection, reporting and record keeping according to County, State and HIPAA regulations.
- b.) Testing Staff: Pinnacle Training Systems will provide 6-8 staff members to conduct the COVID 19 testing to test the required number of employees.
- c.) The balance of the fee is due and payable at the end of the Term of this Agreement (as set forth in paragraph 3.a) above, unless terminated earlier pursuant to paragraphs 3.b)-c). In any case, CLIENT shall pay PTS all fees due hereunder not later than 45 days after receipt of final invoice.

