



Contract #: AR3531

STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Utah Division of Purchasing and the following Contractor:

Nomi Health, Inc.

Name

898 N 1200 W, STE 201

Street Address

Orem

Utah

84057

City

State

Zip

Vendor # VC236161 Commodity Code #: 421 Legal Status of Contractor: For-Profit Corporation

Contact Name: Josh Walker Phone Number: +1 801-599-8859 Email: josh@nomihealth.com

2. CONTRACT PORTFOLIO NAME: COVID-19 Response.
3. GENERAL PURPOSE OF CONTRACT: To provide scheduling, sample collection, and call center support for COVID-19 testing. Actual lab testing for COVID-19 is NOT within the scope of this Contract..
4. PROCUREMENT: This contract is entered into as a result of the procurement process on FY2020, Solicitation# SK20-34
5. CONTRACT PERIOD: Effective Date: Thursday, July 23, 2020. Termination Date: Tuesday, July 22, 2025 unless terminated early or extended in accordance with the terms and conditions of this contract.
6. Administrative Fee (if any): Zero Percent (or 0.00%).
7. Prompt Payment Discount Details (if any): N/A.
8. ATTACHMENT A: Standard Terms and Conditions for Services
ATTACHMENT B: Additional Terms and Conditions For Federal Emergency Funds Use
ATTACHMENT C: Scope of Work
ATTACHMENT D: Price Schedule
- Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**
9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah Procurement Code, Procurement Rules, and Contractor's response to solicitation #SK20-34.
10. Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the parties and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 5 above.

CONTRACTOR

DIVISION OF PURCHASING

DocuSigned by:

Joshua Walker

7/28/2020

Contractor's signature

76E4F0A87596420...

Date

07/28/2020

Director, Division of Purchasing

Date

Joshua walker

COO, Co-Founder

Type or Print Name and Title

**ATTACHMENT A: STANDARD TERMS AND CONDITIONS FOR SERVICES
STATE OF UTAH COOPERATIVE CONTRACT**

This is a State of Utah Cooperative Contract ("State Cooperative Contract") for services (including professional services), meaning the furnishing of labor, time, or effort by a contractor. This State Cooperative Contract is the result of a cooperative procurement for the benefit of Eligible Users and may be used by Eligible Users without the Eligible Users signing a participating addendum.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
 - b) **"Contract"** means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division and accepted by Contractor that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor sign.
 - d) **"Contractor"** means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **"Custom Deliverable"** means the Work Product that is specifically identified as a "Custom Deliverable" in a Scope of Work and that Contractor is required to deliver to the Eligible User under this Contract.
 - f) **"Division"** means the State of Utah Division of Purchasing.
 - g) **"Eligible User(s)"** means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) **"End User Agreement"** means any agreement that Eligible Users are required to sign in order to participate in this Contract including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) **"Services"** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but are not limited to, all of the deliverable(s) and Custom Deliverable that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - j) **"Proposal"** means Contractor's response to the Division's Solicitation.
 - k) **"Solicitation"** means the documents used by the Division to obtain Contractor's Proposal.
 - l) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - n) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) for an Eligible User pursuant to this Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This "Status Verification System" requirement, also referred to as "E-Verify", only applies to contracts issued through a Request for Proposal process

and to sole sources that are included within a Request for Proposal.

1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State Entity or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and any Subcontractors selected by Contractor, and shall fully indemnify, defend, and save harmless the Division, Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or any Subcontractors selected by Contractor, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the Division, Eligible Users, or the State of Utah or due to the action or omission of any Subcontractor selected or identified by the Division, an Eligible User or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property. To the fullest extent permitted by law, the State of Utah shall fully indemnify, defend, and save harmless the Contractor and its affiliates, officers, and employees from all claims, losses, suits, actions, damages, and costs of every name and description caused by any intentional act, omission or negligence of the State of Utah, provided, however, that the State of Utah shall not indemnify for that portion of any claim, loss, or damage due to the fault of the Contractor.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for Services properly performed prior to date of termination.

Contractor shall be compensated for all Services performed and all costs incurred under this Contract up to the effective date of the notice of termination and any reasonable unabsorbed expenses directly incurred in preparation to perform this Contract. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services performed and all costs incurred under this Contract up to the date of termination including any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract and any reasonable unabsorbed expenses directly incurred in preparation to perform this Contract. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division, if the Division reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the Divisions or the

Eligible User's ability to pay Contractor. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered, the Eligible User will reimburse Contractor for the Services performed and all costs incurred until the effective date of said notice and any reasonable unabsorbed expenses directly incurred in preparation to perform this Contract. The Division, the Eligible User, and the State of Utah will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the Eligible User's funds and may be used in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
15. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
 - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

16. **RESERVED.**
17. **END USER AGREEMENT:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion or termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
18. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
19. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Services based upon the same terms, conditions and prices of this Contract.
20. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Services from this Contract will be treated as if they were individual customers. The Division represents and warrants that each Eligible User is bound to the terms of this Contract and that each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
21. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
22. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related purchase orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing and expressly approved by the Division, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, and invoices.
23. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until delivery, when responsibility will

pass to the Eligible User, except as to latent defects or fraud. Contractor shall be responsible for the customary industry standard in packing and shipping any goods relating to these Services.

24. **REPORTS AND FEES:**

1. **Intentionally Omitted.**

2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.

3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

5. **Timely Reports:** If the quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

25. **ORDERING:** Orders will be placed by the Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

26. **ACCEPTANCE AND REJECTION:** The Eligible User shall have thirty (30) days after delivery of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the Eligible User.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) require Contractor to promptly correct or reperform the nonconforming Services (or repair any nonconforming deliverables) subject to the terms of this Contract; or (ii) if the Contractor is unwilling or unable to correct or reperform the nonconforming Services (or repair any nonconforming deliverables), then the State Entity may return any nonconforming deliverable related to the Services for a full refund of all amounts paid for such nonconforming deliverable.

27. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Service(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

28. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Division, the Eligible User, and the State of Utah from all claims and all liability to the Contractor. The Eligible User's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor. The State of Utah, the Division, and the Eligible User will not allow the Contractor to charge end users electronic payment fees of any kind.

29. **TIME IS OF THE ESSENCE:** Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the Eligible User and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Services by any applicable deadline stated in this Contract.

30. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.

31. **PERFORMANCE EVALUATION:** The Eligible User may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

32. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the Eligible User and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

33. **REVIEWS:** The Division and Eligible Users reserve the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

34. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:

Contractor will indemnify and hold the Division, the Eligible User, and the State of Utah (the "Indemnified Parties") harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah (collectively, "Claims") for infringement by the Services of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section. Contractor's obligations under this paragraph shall only apply to the extent that: (a) the Indemnified Party promptly notifies Contractor in writing of the Claim, provided that failure to give or delay in giving such notice will not relieve Contractor of its obligations hereunder except to the extent Contractor demonstrates that the defense of such action is materially prejudiced thereby; (b) Contractor has control of the defense and all related settlement negotiations relating to the Claim, provided however that the settlement of any Claim shall not be made without advance written permission of the Indemnified Party, which shall not be unreasonably withheld; and (c) the Indemnified Party provides Contractor with the assistance, information and authority reasonably necessary to perform the above. Notwithstanding the foregoing, Contractor shall not have any obligation or liability under this paragraph for any Claim to the extent that the Claim is caused by, or results from the actions or omissions of an Indemnified Party or any other person or entity other than Contractor.

35. OWNERSHIP IN INTELLECTUAL PROPERTY: The Division, the Eligible User, and Contractor agree that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing.

36. OWNERSHIP IN CUSTOM DELIVERABLES: In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,
2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User. Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables as contemplated by this Contract. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. The Eligible User and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

37. ASSIGNMENT: Contractor may not assign, sell, transfer, or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.

38. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The Division may issue a written notice of default providing a ten (10) business day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division or the State of Utah; or (v) demand a full refund of any payment that an Eligible User has made to Contractor under this Contract for Services that do not conform to this Contract.

39. FORCE MAJEURE: Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.

40. CONFIDENTIALITY: If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly

notify the Division and the relevant Eligible User of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality (other than for breaches by Subcontractors selected or identified by the Division, an Eligible User or the State of Utah), including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Division, the Eligible User, and the State of Utah, including anyone for whom the Division, the Eligible User, or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

41. **PUBLICITY:** Contractor shall submit to the Eligible User for written approval all advertising and publicity matters relating to this Contract. It is within the Eligible User's sole discretion whether to provide approval, which must be done in writing.
42. **CONTRACT INFORMATION:** During the duration of this Contract, the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.
46. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division appoints such an expert or panel, the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
47. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); (v) Contractor's terms and conditions that are attached to this Contract, if any; and (vi) Contractor's attachments, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.
48. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Services that has not been cured.
49. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
50. **LIMITATION OF LIABILITY:** The parties acknowledge and agree that Contractor's services are being engaged on an urgent basis to address a new and growing public health crisis and that many of the Services to be provided are new and untested. ACCORDINGLY, TO THE FULLEST EXTENT ALLOWED BY LAW, CONTRACTOR AND ITS AFFILIATES, OFFICERS, EMPLOYEES, REPRESENTATIVES AND SUBCONTRACTORS SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS, INACCURACY OR CORRUPTION OF DATA OR COST OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (B) ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; OR (C) ANY AMOUNTS GREATER THAN THE FEES PAID TO CONTRACTOR UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO ANY CLAIM BEING MADE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO (I) ANY BODILY INJURY OR DEATH, (II) ANY BREACH OF CONTRACTOR'S OBLIGATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT ("HIPAA") OR WITH RESPECT TO ANY PROTECTED HEALTH INFORMATION (AS SUCH TERM IS DEFINED IN HIPAA), OR (III) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 34.
51. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revision Date: 23 April 2020)

ATTACHMENT B: ADDITIONAL TERMS AND CONDITIONS FOR FEDERAL EMERGENCY FUNDS USE

1. Compliance with the Contract Work Hours and Safety Standards Act.

- (a) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1(a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1(a) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1(a) of this section.
- (c) Withholding for unpaid wages and liquidated damages. The Division and applicable Federal Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 1(b) of this section.
- (d) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 1(a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1(a) through (d) of this section.

2. Clean Air Act

- (e) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (f) The contractor agrees to report each violation to the Division and understands and agrees that the Division will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (g) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- (h) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (i) The contractor agrees to report each violation to the Division and understands and agrees that the Division will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (j) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

3. Federal Water Pollution Control Act

- (a) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (b) The contractor agrees to report each violation to the Division and understands and agrees that the Division will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4. PROCUREMENT OF RECOVERED MATERIALS.

- (a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired Competitively within a timeframe providing for compliance with the contract performance schedule;
 - I. Meeting contract performance requirements; or
 - II. At a reasonable price.
- (b) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (c) (The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

5. US Department of Homeland Security (“DHS”) SEAL, LOGO, AND FLAGS.

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

6. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.

FEMA financial assistance may be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

7. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Attachment C – Scope of Work

Contract # AR3531

Nomi Health**A. Executive Summary**

As a general contractor for the state of Utah, Nomi Health (Nomi) provides configurable turn-key COVID-19 testing services. These services include an online assessment (if requested by Eligible User) and appointment scheduling for individual testing, the collection of samples, and communication of test results to patients with accessibility to individuals via phone and chat channels.

More specifically, Nomi's available services for Utah are within the following scope areas:

1. Technology and Communications:

- a. Online COVID-19 health assessment (Test Utah website)
- b. Online appointment scheduling
- c. Unique QR code identifiers
- d. Sample kit routing and tracking
- e. Call center and chat support channels

2. Field Operations and Full Service:

- a. Sample collection site assembly and disassembly
- b. Collection site operations and procedures playbook / manual
- c. Sample collection kits
- d. Personal Protective Equipment (PPE)
- e. Courier services

4. Information Insights:

- a. Configurable dashboards, reports and metrics based on near real-time data

B. Detailed Scope Descriptions**1. Technology and Communications**

- a. **Assessment/Scheduling/Workflow Management:** Provides licensing costs and payments for workflow management, including digital health assessment, scheduling platform, case routing & tracking, and patient communications. If Eligible Users' instance of the survey and workflow tool is not being used some additional licensing costs may apply.
- b. **QR Code/Routing/Tracking:** Provides the technology for unique QR Code, Bar Code, and labeling to track each individual collection sample
- c. **Call Center and Chatbot:** Provides call center, chat and chat bot services for patient service inquiries staffed by nurses

2. Field Operations

- a. **Site Assembly/Disassembly:** Provides collection site layout design once location(s) are identified; services include the setup and takedown of physical site infrastructure and materials to include drive through, walk up, permanent or temporary, mobile, internal or external collection site options are each available in a small/medium/large configurations.
- b. Customized sample collection infrastructure for large events like concerts, sporting events, conference, etc.
- b. **Operations/Procedures Manuals:** Provides standardized operations and procedures manuals to field personnel to enable consistency of practices in the field
- c. **Sample Kits:** Provides complete transport kit for production. Each transport kit shall include vial, transport media, and swabs, and an adequate amount fluid to complete a SARS-CoV-2 RT-PCR test. If required by Eligible User, uses test kits provided by Eligible User or Eligible User's contracted lab.
- d. **Personal Protective Equipment (PPE):** Provides Personal Protective Equipment (PPE) for each collection site
- e. **Trained Staffing:** Provides trained staffing for sample collection. Nomi will be responsible for coordinating and providing all professional staff needed for each testing site, including sourcing nurses, technicians and when appropriate physicians. If required by the Eligible User, Nomi will provide a Medical Director to serve as the "ordering provider" for testing.

Attachment C – Scope of Work

Contract # AR3531

- f. **Courier Services:** Provides reasonable local courier services to transport test samples from collection sites to corresponding lab for processing
- 3. **Full Service Solution**
 - a. **End-to-End:** Full-service solution includes all necessary services from sample collection to communication of test results
- 4. **Information Insights**
 - a. **Dashboards:** Provides configurable dashboards for designated users
 - b. **Reporting:** Provides configurable reports for designated users
 - c. **Metrics:** Provides configurable metrics and measurements for designated users
- C. **Solution Metrics / Key Performance Indicators**
 - 1. **Testing**
 - a. **Assessments Conducted:** Number of patients that have conducted an online health assessment, if requested by eligible user.
 - b. **Tests Conducted:** Number of patients that have received a test
 - c. **Assessments vs. Tests:** Percentage of patients that conducted an online health assessment and received a test, if requested by eligible user.
 - d. **Symptomatic vs. Asymptomatic:** Number of patients tested displaying or indicating symptoms at time of test collection, if requested by eligible user.
 - e. **Trends and Patterns:** Indicative metrics related to outbreak trends, impacted geographic areas, etc.
 - f. **Returning customers:** Number of patients tested more than once
 - g. **Socio-economic drivers:** Socio-economic indicators associated with testing patient population
 - 2. **Operational**
 - a. **Average Wait Time:** Average time spent at collection facility from the time of check-in to discharge
 - b. **Average Throughput:** Average amount of sample kits collected over period of time
 - c. **Average Testing Turnaround Time:** Average amount of time between sample kit leaving collection facility and results posting to provider or patient.
 - d. **Staffing Levels:** Percentage of total roles filled at a given collection site
 - e. **Invalid Results:** Number of tests with invalid or inconclusive results
 - f. **Test Kit Validity:** Number of test kits unable to be tested due to contamination in courier process
 - g. **Contact Support (Call and Chatbot):** Average wait time to initial answer, average call length, trends of questions (e.g., complaint types)
- D. **Risk Management Plan**
 - 1. **Sample Transport Kits and Lab Compatibility**
 - a. **Issue:**
Labs often have specific requirements around the amount and type of fluid used in the transport kits. These specific lab requirements can prevent certain labs from receiving transport kits that do not meet their specific requirements.
 - b. **Solution:**
 - i. Identify all participating lab(s) transport kit requirements, identify which of those labs have congruent transport kit specifications and designate specific sample collection sites to match up with the protocols and specification of a particular participating lab. This will ensure that there will be alignment of transport kit compatibility and sampling between the sample collection site and the processing lab. In addition, the mapping of lab transport kit compatibility and requirements across the Eligible Users selected labs will allow us to understand which labs can serve as sample collection site overflow based on the transport kit specifications.
 - ii. Secure from each participating lab their specific sample transport kit, bar code and distribute those transport kits to Contractor's sample collection site(s) to ensure the receiving lab is getting the exact transport kit that they are able to process.

Attachment C – Scope of Work

Contract # AR3531

- c. **Documented Performance with Solution:**
The above-mentioned approach has worked well for us as we continue to support 4 state testing programs in which we operate more than 27 sample collection sites and work with more than 4 labs. This approach has allowed us to be nimble in expanding the labs that we can work with and in meeting lab processing requirements at the same time.
- 2. **Lab information management system (LIMS) data compatibility and workflow integration**
 - a. **Issue:**
Each lab has its own LIMS system that is used to create lab orders, process and keep patient information. It will be important for the sample collection site vendor to be able to integrate with each processing lab's LIMS system or a unified State system.
 - b. **Solution:**
Contractor's system uses CLIA standards allowing us to be universally compatible with organizations using those same standards.
 - c. **Documented Performance with Solution:**
In Iowa, Nebraska, and Utah, Contractor has integrated its workflow tools and data flows into the respective lab's LIMS system and have been able to complete those integrations within 2 weeks or less.
- 3. **Misaligned Sample Collection testing standards across lab vendors**
 - a. **Issue:**
Under CLIA requirements, the lab is required to have oversight on the sample collection procedure at the sample collection sites as well as have access to certain data points around sample collection transport kits storage and transport temperature.
 - b. **Solution:**
The Eligible User to enable sample collection sites to "partner" with specific labs to ensure continuity and consistency with standards and collection methods. In the absence of partner preference, the Eligible User must ensure that each collection site is using CDC and CLIA best practices as part of their SOP to support each lab location and ensure that site leaders consistently review and train staff to support the sample collection efforts on site. Absent any specific partnerships and maintaining an "open" system will require us to work with each lab to ensure Contractor has a documented understanding of specific requirements they have around sample collection included but not limited to daily audit logs of sample transport kits volumes with each lab.
 - c. **Documented Performance with Solution:**
Nomi Health's key value proposition has been to standardize methods and mediums of collection in partnership with labs to ensure continuity and quality. Contractor believes the same exists for other potential Offerors and encourage the Eligible User to help mitigate any potential issues involved with a "many to many" model.

E. Weekly Risk Report Format

Weekly Risk Report

F. Project Contact List

- 1. **Dash Ballarta**
 - a. **Role:** Test Utah Project Manager
 - b. **Email:** dash@nomihealth.com
- 2. **Joshua Walker**
 - a. **Role:** Founder and COO
 - b. **Email:** josh@nomihealth.com
- 3. **Mark Newman**
 - a. **Role:** Founder and CEO
 - b. **Email:** mark@nomihealth.com

Attachment C – Scope of Work
Contract # AR3531

-- End of Attachment C --

Attachment D - Price Schedule
Scheduling Website, Sample Collection, and Call Center Support for COVID-19
Contract AR3531

Contractor: Nomi Health, Inc

Sample Collection		
Sample Collection Volumes*	Fixed Cost Per Site Per Month	Additional Cost per Sample Collected
Monthly cost to operate ONE sample collection sites with the volumes outlined below:		
0 to 200 samples per day	\$ 75,000.00	\$ 8.00
201 to 500 samples per day	\$ 90,000.00	\$ 8.00
501+ samples per day	\$ 125,000.00	\$ 8.00

*Eligible Users reserve the right to adjust the # of Sites needed and the sample collection volumes during the resulting contract term based on actual demand.

**Sample collection sites fixed price based on operating 6 days a week for 8 hrs. a day. These operating days and hours can be adjusted based the needs of the eligible user upon mutually agreement.

Website		
Website that includes information about when/where to go for sample collection and/or how to schedule an appointment if appointments were being made.	\$ 2,000.00	per month
Website maintenance cost per month	\$	2,000.00

Call Center Support			
Additional costs for the purchase and configuration of equipment.			
Description	Purpose	Billing Frequency	Cost
Integrated contact center response to respond to questions about the sample collection, scheduling, testing, results through phone and chat.	Improved Patient Experience	Monthly	\$ 30,000.00