



## MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT ("Agreement") is made and entered into this 18 day of May, 2021 by and between \_\_\_\_\_ with a principal office at \_\_\_\_\_ ("Client"), and Employee Screening Services of Missouri, LLC, d/b/a Tomo Drug Testing, a Missouri limited liability company ("Tomo").

**Section 1. Services.** Tomo will provide services as requested by Client throughout the term of this Agreement. The services ("Services") to be provided by Tomo hereunder, including the specific terms, conditions and fees associated with each Service, shall be set out in one or more "Statement(s) of Work." The initial Statement of Work is attached hereto as Schedule 1 and incorporated by reference herein. For purposes of this Agreement, Statements of Work are those writings negotiated, agreed to and executed by the parties that are attached to this Agreement as a schedule and that document the specific services to be provided for each project including the compensation therefore and any other terms and conditions agreed to by the parties for each project. Each Statement of Work is independent of each other Statement of Work, but each Statement of Work is a part of and integral to this Agreement. If any of the terms of a Statement of Work directly conflict with the terms of this Agreement, the terms of the Statement of Work shall control for that Statement of Work. For the avoidance of doubt, where a Statement of Work includes additional and/or more specific terms and conditions with respect to a concept addressed generally herein, the Statement of Work shall control on that concept or specific item (i.e. scope, payment terms, specific restrictions).

**Section 2. Fees.** Client will pay fees in accordance with the terms, conditions, and fee schedules set forth in this Agreement, at the frequency noted in the Fee Schedule. Subject to Tomo discretion, the fees for all Services provided under this agreement shall automatically increase by no more than 3% on each Anniversary Date of this Agreement. Additionally, Tomo shall have the right to modify the fees charged for Services at any time upon ninety (90) days' written or electronically communicated notice to Client.

**Section 3. Terms of Payment; Suspension of Services.** Invoices will be paid 30 days from date of invoice, unless otherwise outlined in a Statement of Work, and will be considered past due after 31 days from the date of invoice. Timely payment is a condition precedent to continuity of Services. As such, Tomo reserves the right to suspend Services if Client fails to pay invoices according to the terms of this Agreement. Any invoice that are past due shall bear interest at the rate of 1.5% per month.

**Section 4. Term and Termination.** This Agreement shall commence on May 18, 2021 ("Start Date") and will continue for twelve months, at which point it will automatically renew each year on the same month and day as the Start Date of this Agreement ("Anniversary Date") until terminated by either party, with or without cause, upon thirty (30) days' written notice to the other party. Such termination rights may be exercised by a party notwithstanding any initial or subsequent term stated above. A Statement of Work issued hereunder may set forth a different term which shall govern for that Statement of Work. The termination of this Agreement will be deemed a termination of all Statements of Work, provided however, in the event a Statement of Work contains termination provisions, such termination provisions included in the particular Statement of Work shall govern for that particular Statement of Work. The termination of only a Statement of Work and not of this Agreement will not affect other Statements of Work.

**Section 5. Insurance.** Tomo shall, at its sole cost and expense, procure, keep, and maintain, throughout the term of this Agreement, a policy or policies, with responsible and reputable insurers, insurance with respect to its business and Services, in such amounts and covering such risks, as is carried generally in accordance with sound business practice by companies in similar businesses in the same localities in which Tomo is situated. Tomo shall provide copies of all such insurance policies, within ten (10) days of Client's written request for such copies.

**Section 6. Indemnity.** Each party (the "Indemnitor") shall indemnify and hold harmless the other party, its directors, officers, employees, agents, representatives, successors, assigns and subcontractors (the "Indemnitee"), from and against any and all claims, liabilities, losses, damages, fines, penalties, judgments, costs and expenses (including without limitation reasonable attorneys' fees, litigation costs and all other costs associated with civil or criminal lawsuits, investigations, audits or administrative proceedings) (hereinafter referred to as "Claim(s)") incurred by or

assessed against Indemnitee that result from or arise out of the negligent or intentional act or omission of Indemnitor in connection with this Agreement (including without limitation Claims arising out of (i) the gross negligence or willful misconduct of Indemnitor, (ii) the infringement upon the intellectual property rights of a third party, or (iii) the violation of any law, rule, order, regulation, ordinance or statute caused by, contributed to by, arising out of, or in any way connected with the action, inaction, statements, documentation, source material or claims of Indemnitor), except to the extent any such Claim was caused by a negligent or intentional act or omission of Indemnitee. For the purpose of clarification, Tomo shall be entitled to rely on all statements, claims, documentation and source material provided to it by Client, and Client shall indemnify Tomo in accordance with the preceding sentence for all Claims incurred by or assessed against Tomo on account of such reliance.

**Section 7. Independent Contractor.** It is expressly understood, agreed and represented by Tomo that the personnel furnished by Tomo to perform the Services stipulated under this Agreement shall be and will remain Tomo employees or subcontractors for all purposes, and under no circumstances are such employees or subcontractors to be considered Client's employees, subcontractors or agents, and Tomo and its personnel shall be in an independent contractor relationship with Client at all times during the term of this Agreement. Tomo and its personnel are not eligible for coverage under, and shall make no claims arising under, Client's unemployment insurance, worker's compensation insurance, or any form of employee benefits, and Tomo shall be responsible for the normal responsibilities of an employer toward the personnel furnished under this Agreement relating to this independent contractor status, including, without limitation, Social Security, income, and payroll taxes.

**Section 8. Tomo Intellectual Property and Confidential Information.** Except as may otherwise be agreed in writing by the parties from time to time with respect to a particular modification or idea, rights to intellectual property and knowledge developed, utilized, or modified in the performance of Services shall remain the property of Tomo. Additionally, Tomo has developed, at its own expense, valuable technical and non-technical business and trade secrets and other confidential information including, without limitation, information pertaining to Tomo's products, Services, written materials, present and future development, processes or techniques (including computer software and related products), marketing strategies and related data, customer lists, financial information, and personnel ("Confidential Information"). Tomo has protected the disclosure and release of Confidential Information to third persons and intends that such information will continue to be kept confidential. To this end, any Confidential Information which may be disclosed to Client as part of the Services provided herein shall not be considered a waiver for the release or disclosure of such Confidential Information by Client to any other party or entity without the express, prior written consent of Tomo.

**Section 9. Client Confidentiality.** All Tomo employees and subcontractors (singularly, "Resource" or collectively "Resources") have signed confidentiality statements, which are on file in the Tomo offices. Each such employee and subcontractor will further sign a confidentiality statement specific to the contracting Client, if so requested by Client. It is agreed and understood that information concerning the business of Client or information relating to its operations, coding, billing, patients, staff, or internal processes shall be treated as confidential ("Client Confidential Information"). Tomo will protect the Client Confidential Information and treat it as strictly confidential. Tomo shall take reasonable security precautions, at least as great as the precautions it takes to protect its own Confidential Information, but in no event less than reasonable care, to keep confidential the Client Confidential Information. Tomo may disclose Client Confidential Information or materials to its employees and subcontractors only on a need-to-know basis. Tomo, its employees and subcontractors will not divulge, disclose, or communicate in any manner Client Confidential Information to any third party without the prior written consent of Client.

**Section 10. No Third-Party Rights.** This Agreement has been made and is made solely for the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

**Section 11. Statutes and Regulations.** Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to, any successor statute, regulation ruling, or administrative order or decree.

**Section 12. Force Majeure.** Neither party hereto shall be liable for any delay or failure in the performance of any obligation under this Agreement or for any loss or damage to the extent that such nonperformance, delay, loss, or damage results from any contingency which is beyond the control of such party, provided such contingency is not caused by the fault or negligence of such party. A contingency for purposes of this Agreement shall include acts of God, fires, floods, earthquakes, explosions, storms, wars, hostilities, blockades, public disorders, quarantine restrictions, embargoes, strikes or other labor disturbances, or terrorist acts, and compliance with any law, order, or control of or insistence by any governmental or military authority. The party claiming to be affected by such

contingency shall give immediate notice to the other party, giving full particulars thereof, and all such contingencies shall, as far as is reasonably possible, be remedied with all reasonable efforts and dispatch. The existence of such contingencies shall justify the suspension of performance hereunder by either party and shall extend the time for such performance for a period equal to the period of delay; provided, however, that if such period of delay shall exceed sixty (60) days from the date of such notice, either party shall have the right to terminate this Agreement.

**Section 13. No Warranty; Limitation of Liability.** Tomo expressly disclaims any and all warranties and/ or conditions, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, with respect to the Services it provides. Tomo's Services are provided "as-is". Client's exclusive remedy and Tomo's sole liability, if any, shall be limited to the aggregate amount of fees paid by Client for the specific Services which are the basis of any claim(s) by Client in the twelve (12) month period immediately preceding any such claim(s). To the maximum extent permitted by applicable law, in no event shall Tomo be liable for any special, incidental, indirect, consequential, punitive, or exemplary damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the services, whether based upon contract, warranty, tort, negligence, strict liability or otherwise, even if Client has been advised of the possibility of such damages.

**Section 14. Assignment.** Unless otherwise expressly provided in this Agreement, neither party may assign its rights or obligations under this Agreement. Notwithstanding the foregoing, this Agreement may be assigned by either party to an entity that is an affiliate or successor-in-interest to such party without the prior written consent of the other party, and such party will notify the other party in writing of any such assignment.

**Section 15. Integration.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all previous agreements between the parties. There are no agreements, representations, or warranties between the parties other than those set forth in this Agreement or the attached documents referenced in this Agreement. All exhibits and Statements of Work attached hereto are incorporated by reference herein.

**Section 16. Amendments.** This Agreement may be amended at any time by mutual agreement of the parties without additional consideration, provided that before any amendment shall become effective, it shall be reduced to writing and signed by each party.

**Section 17. Presumption.** This Agreement or any portion hereof shall not be construed against the drafting party by reason of that party having drafted the Agreement or portion hereof.

**Section 18. Governing Law; Forum Selection.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri without regard to conflict of law rules thereof. Any dispute under or in connection with this Agreement or any of the transaction contemplated herein shall be subject to, and the parties hereby submit to, the exclusive jurisdiction of and the personal jurisdiction within the state and federal courts within Greene County, Missouri.

**Section 19. Successors and Assigns.** This Agreement and the rights, privileges, duties, and obligations of the parties hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**Section 20. Waiver.** No waiver of or failure by either party to enforce any of the provisions, terms, conditions, or obligations herein shall be construed as a waiver of any subsequent breach of such provision, term, condition, or obligation, or of any other provision, term, condition, or obligation hereunder, whether the same or different in nature. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for the performance of any other obligations or acts.

**Section 21. Notice.** Client and Tomo shall each designate an authorized individual or job title to communicate with the other party with respect to this Agreement. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been delivered to a party upon personal delivery to that party or on the first business day following delivery by facsimile transmission to the facsimile number provided by the party for such purposes, if simultaneously mailed as provided herein; on the first business day following deposit for overnight delivery with a bonded courier holding itself out to the public as providing such services, with charges prepaid; or on the fourth business day following deposit with the United States Postal Service, postage prepaid, and in any record addressed to the party's address set forth below, or to any other address that the party provides by written notice to the other party, or via email.

If to Client:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

If to Tomo:

Tomo Drug Testing  
2055 S Stewart Ave., Suite A  
Springfield, MO 65804  
Attention: VP, Finance  
Phone Number: (417) 887-7697  
Email: nathancarter@yourdrugtesting.com  
Facsimile Number: (417) 887-7692

1. **Section 22. Non-Solicitation.** Except as detailed otherwise herein, each party covenants and agrees that during the term of this Agreement and for a period of one year from and after the expiration of this Agreement and any renewal thereof for any reason whatsoever, such party will not, directly or indirectly, by itself or through others, without the express, prior written consent of the other party, solicit for employment or hire any employees, subcontractors or agents of the other party, or otherwise induce any such person to terminate his or her relationship with the other party. This provision excludes those solicitations and resulting hires originating from a general employment posting.

**Section 23. Attorneys' Fees.** If court proceedings are required to enforce any provision or to remedy any breach of this Agreement, the prevailing party on such claim will be entitled to an award of reasonable expenses from the non-prevailing party (including, without limitation, reasonable attorneys' fees, litigation costs, court costs, experts' fees and amounts paid in investigation, defense or settlement of any claims, and whether or not such expenses are incurred at the trial, appellate or administrative levels, or upon any other petition for review).

**Section 24. Subcontractors and Partners.** Tomo reserves the right to utilize independent subcontractors or business partners to perform Services for Client on behalf of Tomo.

**Section 25. Client Acceptance.** Unless Client gives written notice to Tomo of any errors in the Services provided hereunder within sixty (60) days after receipt thereof, all rights of Client to protest such errors shall be deemed waived by Client.

**Section 26. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement (or any amendment hereto or any other document delivered pursuant hereto) by electronic or facsimile means shall be as effective as delivery of a manually executed counterpart of this Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the parties against whom enforcement is sought.

In Witness Whereof, the undersigned have executed this Agreement as of the date first written above.

**TOMO**  
**Employee Screening Services of**  
**Missouri, LLC, d/b/a Tomo Drug Testing**

**CLIENT**  
**Broken Arrow Public Schools Transportation**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## FEE SCHEDULE

Broken Arrow Public Schools

Item	Onsite Price	Office Price
Admin Fee		\$150.00
After Hours Flat Fee Emergency	\$150.00	\$150.00
Alcohol Confirmation DOT	\$0.00	\$0.00
Alcohol DOT	\$25.00	\$25.00
Clearinghouse Fee for Pre		\$5.00
Clearinghouse Fee for Violation		\$5.00
DOT 5 Panel Lab (5000)	\$40.00	\$40.00
Fee for RTD or F/U		\$100.00
Instant 10 Panel	\$30.00	\$30.00
Instant 5 Panel w/ PCP	\$20.00	\$20.00
Instant Confirmation 5 Panel (46)		\$35.00
MRO Add-On - NonDOT		\$0.00
Onsite Convenience Fee	\$50.00	
Physical DOT	\$65.00	\$65.00
Physical Non-DOT	\$35.00	\$35.00
Training - Supervisor		\$70.00

Signature:

Name:

Date: