

WAKE COUNTY PUBLIC SCHOOL SYSTEM
Contract Routing Form 1950

Fiscal Year (FY): 2021-2022

Person to Contact: Yvette Steele Phone/Email: 694-0537/y Steele@wc pss.net

Name of Contract: Mako Medical Laboratories LLC

If Change Order - (Amount +/-): \$0.00 Total Contract Amount: \$0.00

Board Action: (Required at \$100,000) Yes No Board Meeting Date: 11/16/2021

Budget Code: _____

Items of Special Note: _____

To be completed by the School or Department required for all contracts \$2,500 and up
INITIAL/DATE THIS FORM AFTER YOU HAVE REVIEWED AND APPROVED THE ATTACHED CONTRACT:

	Initial	Date	Comments
Fiscal Administrator (\$2,500 and up and all MOAs)	<u>TP</u>	<u>11/3/2021</u>	_____
Budget Manager/Principal (\$2,500 - \$9,999 and All MOAs)	<u>PK</u>	<u>11/4/2021</u>	_____
Assistant Superintendent or Area Superintendent (\$10,000 - \$99,999 and all MOAs)	<u>PK</u>	<u>11/4/2021</u>	_____
Superintendent/Chief Officer (\$100,000+ and All MOAs)	<u>EM</u>	<u>11/4/2021</u>	_____

To be completed by the Administrative Services required for all contracts \$2,500 and up

	Initial	Date	Comments
Risk Management (Insurance Review)	<u>gls</u>	<u>11/5/2021</u>	_____
Finance Officer	<u>MBW</u>	<u>11/4/2021</u>	_____
Chief Business Officer (Required ≥ \$100,000)	<u>DN</u>	<u>11/8/2021</u>	_____
School Board Attorney (As required by the Chief Officer or Superintendent)	_____	_____	_____

Non-standard contract certification - "This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act. G.S. 115C-441(a)

Finance Officer _____ Date _____

POR Approval _____

WAKE COUNTY BOARD OF EDUCATION MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“MOA” or “Agreement”) is made and entered into this 16th day of November 2021, between the Wake County Board of Education (the “SCHOOL SYSTEM” or “WCPSS”), 5625 Dillard Drive, Cary, NC 27518, and Mako Medical Laboratories, LLC, (the “PROVIDER”) 8461 Garvey Drive, Raleigh, NC 27616.

WHEREAS, PROVIDER operates a CLIA and CAP Certified laboratory and provides certain COVID-19 testing services, and PROVIDER has been awarded a contract with the State of North Carolina (“State”) to perform certain COVID-19 testing services for K-12 schools, which resulted from RFP # 30-2021 DHHS COVID 050-K-12 Testing, (“State Contract for COVID Testing”); and

WHEREAS, SCHOOL SYSTEM desires to participate in the testing program offered through the State Contract for COVID Testing;

WHEREAS, PROVIDER’s obligations and the State’s reimbursement obligations are set forth in the State Contract for COVID Testing;

WHEREAS, in addition to the terms set forth in the State Contract for COVID Testing, PROVIDER and SCHOOL SYSTEM also desire for the terms and conditions set forth herein to govern the provision of COVID-19 testing services provided to SCHOOL SYSTEM students and staff who participate in the State Contract for COVID Testing; and

WHEREAS, this Agreement outlines the cooperative efforts of PROVIDER and SCHOOL SYSTEM as well as the expectations, responsibilities, and conditions for the provision of COVID-19 testing services that are in addition to those set forth in the State Contract for COVID Testing:

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereto contract and agree as follows:

SECTION 1. TERM OF AGREEMENT

Subject to the terms and conditions hereinafter set forth, the term of this Agreement shall be from the date first written above **through June 30, 2022.**

SECTION 2. SERVICES TO BE PROVIDED BY PROVIDER

- 2.1 PROVIDER agrees to provide COVID-19 testing services as requested by SCHOOL SYSTEM during the Term of this Agreement (the ‘Services’). Specifically, PROVIDER agrees to provide the following:
 - 2.1.1 To provide COVID-19 sample collection, laboratory processing, test resulting, and testing sample transportation to the MAKO laboratory in accordance with the standards set forth in the State Contract for COVID Testing;
 - 2.1.2 To only report test results to (1) the individual tested or the parent/guardian of the minor student tested, (2) SCHOOL SYSTEM’s designee for each testing site, and (3) required state and local health authorities; Provider shall also ensure that such results are reported securely in manner that complies with Section 13 of this Agreement;
 - 2.1.3 To incorporate SCHOOL SYSTEM’s additions to consent forms regarding participation in PROVIDER’s testing program;
 - 2.1.4 To act as SCHOOL SYSTEM’s designee in reporting positive COVID-19 test results obtained through PROVIDER’s testing program to Wake County Public Health; and
 - 2.1.5 Regarding individual tests that are required for participants following a positive pool test, to promptly report to SCHOOL SYSTEM any individual(s) who fail to report for an individual COVID-19 test following a positive pool test. PROVIDER shall report such no shows to the

SCHOOL SYSTEM on the day that the no-show occurs, and these reports shall be made to the SCHOOL SYSTEM contact who is otherwise notified of test results for the affected site.

- 2.2 Qualifications of PROVIDER. PROVIDER warrants that all agents or employees of PROVIDER who will provide services under this Agreement will be fully qualified, possess any requisite licenses, and otherwise be legally entitled to perform the services provided, and shall exercise the skill and care customarily exercised by duly licensed and qualified providers of the same or similar services.
- 2.3 Records Maintenance. PROVIDER shall maintain written documentation of any service provided, including any required documentation meeting the requirements of applicable federal, state and local laws and regulations.
- 2.4 Monitoring and Auditing. PROVIDER shall cooperate with SCHOOL SYSTEM, or with any other person or agency as directed by SCHOOL SYSTEM, in monitoring, auditing, or investigating activities related to this Agreement. PROVIDER shall provide auditors retained by SCHOOL SYSTEM with access to any records and files related to the provision of services under this Agreement.

SECTION 3. SERVICES TO BE PROVIDED BY SCHOOL SYSTEM

- 3.1 SCHOOL SYSTEM agrees to:
 - 3.1.1 Participate in the State Contract for COVID Testing at select sites designated by SCHOOL SYSTEM;
 - 3.1.2 Distribute information to parents, eligible students, and staff about participation in and registration for PROVIDER's testing program;
 - 3.1.3 Notify PROVIDER of the SCHOOL SYSTEM's designees for receiving test results at each site, and such designee information will be provided by the Assistant Superintendent for Student Support Services; and
 - 3.1.4 Cooperate with any required reporting to the State as part of the State Contract for COVID Testing.

SECTION 4. FUNDING AND RELATIONSHIP OF PARTIES

It is the intent of PROVIDER and SCHOOL SYSTEM to memorialize SCHOOL SYSTEM's participation in the State Contract for COVID Testing subject to these additional terms. The parties agree that nothing in this Agreement relieves PROVIDER from any obligation, term, or condition to which PROVIDER has otherwise agreed pursuant to the State Contract for COVID Testing. PROVIDER and SCHOOL SYSTEM further agree that any and all payment to PROVIDER shall be from the State and pursuant to the State Contract for COVID Testing and that SCHOOL SYSTEM shall not be obligated to make any payments to PROVIDER for the testing services it offers and provides through that testing program. PROVIDER and SCHOOL SYSTEM further agree that neither party is an officer, agent, or employee of the other party for any purpose. Each party has or will secure, at its own expense, all personnel required in performing the services under this Agreement. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under all applicable federal, state, and local laws to perform such services. Each party agrees that it shall obey all State and Federal laws, rules, and regulations which are applicable to provision of the services called for herein. It is expressly understood and agreed that PROVIDER shall at all times be the employer of all personnel employed by PROVIDER and placed in SCHOOL SYSTEM schools or facilities pursuant to this Agreement and that PROVIDER alone shall be responsible for hiring, paying the salaries of, making appropriate tax withholdings for, paying all federal, state, and FICA taxes for, and, where appropriate, terminating the employment of any such personnel; and that SCHOOL SYSTEM shall at all times be the employer of all personnel employed by SCHOOL SYSTEM and placed in SCHOOL SYSTEM schools or facilities pursuant to this Agreement and that SCHOOL SYSTEM alone shall be responsible for hiring, paying the salaries of, making appropriate tax withholdings for, paying all federal, state, and FICA taxes for, and where appropriate, terminating the employment of any such personnel.

SECTION 5. DISPUTE SETTLEMENT

The parties to this Agreement agree that there should be few, if any, disagreements that result in a formal dispute and commit themselves to resolving those disagreements informally. In good faith, both parties agree to use all reasonable means to resolve disagreements. No dispute settlement process will suspend or replace the exercise of any available equitable or legal relief.

SECTION 6. TERMINATION

SCHOOL SYSTEM may terminate this Agreement at any time at its complete discretion upon twenty (20) calendar days' notice in writing from the SCHOOL SYSTEM to PROVIDER prior to the date of termination. In addition, all finished or unfinished documents and other materials produced by PROVIDER pursuant to this Agreement shall, at the request of the SCHOOL SYSTEM be turned over to it and become its property. If the Agreement is terminated by the SCHOOL SYSTEM in accordance with this section, the SCHOOL SYSTEM will cooperate with the STATE and PROVIDER to ensure that PROVIDER receives any payment due from the STATE for all services started and/or fully performed for SCHOOL SYSTEM as of the date of termination. In addition to the foregoing, at any time, the SCHOOL SYSTEM may terminate this Agreement immediately and without prior notice if provider is unable to meet goals and timetables or if the SCHOOL SYSTEM is dissatisfied with the quality of services provided, or if deemed necessary to protect health or safety.

SECTION 7. INSURANCE REQUIREMENTS

PROVIDER agrees to maintain and provide evidence of \$1,000,000 in general liability, each occurrence and other appropriate insurance, as well as Workers Compensation in the required statutory amount, for all employees participating in the provision of services under this Agreement. PROVIDER shall maintain \$1,000,000 in automobile liability insurance for services under this Agreement. PROVIDER also agrees to maintain \$1,000,000 in professional liability insurance if the PROVIDER is engaged in a professional service pursuant to this Agreement. PROVIDER shall also maintain and show proof of Cyber Liability coverage in an amount no less than \$1,000,000. SCHOOL SYSTEM shall be named by endorsement as an additional insured on such liability policies. Certificates of such insurance shall be furnished by PROVIDER to SCHOOL SYSTEM and shall contain the provision that SCHOOL SYSTEM be given 10 days' written notice of any intent to cancel or terminate by either PROVIDER or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this Agreement and shall be grounds for immediate termination of this Agreement.

SECTION 8. INDEMNIFICATION

PROVIDER shall indemnify, defend and hold harmless SCHOOL SYSTEM, its agents, and employees, from and against all claims, actions, demands, costs, damages, losses and/or expenses of any kind whatsoever, in whole or in part, resulting from or connected with any acts under this Agreement or from the omission or commission of any act, lawful or unlawful, by PROVIDER, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by SCHOOL SYSTEM in connection with the defense of said matters. The indemnification provided for herein shall not be construed as a waiver of any applicable defense of governmental, statutory, or common law immunity, and shall not prevent SCHOOL SYSTEM from asserting any defense of such immunity; provided that if a court of competent and final jurisdiction determines that no such immunity applies, then the indemnity provided for herein shall apply. The parties agree that this indemnification clause is an "evidence of indebtedness" for purposes of N. C. Gen. Stat. § 6-21.2.

SECTION 9. NON-ASSIGNMENT

Neither party shall assign or subcontract any portion of the services to be provided hereunder, or this Agreement, to any other person or entity without the prior written consent of the other party.

SECTION 10. NO THIRD-PARTY BENEFICIARIES

This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto, and shall not confer any rights or remedies upon any person or entity other than the parties hereto.

SECTION 11. NO WAIVER OF SOVEREIGN IMMUNITY

PROVIDER and the SCHOOL SYSTEM agree that nothing in this Agreement shall be construed to mandate purchase of insurance by SCHOOL SYSTEM pursuant to N.C.G.S. 115C-42, or to in any other way waive a party's defense of sovereign or governmental immunity from any cause of action alleged or brought against a party for any reason if otherwise available as a matter of law.

SECTION 12. APPLICABLE WAKE COUNTY BOARD OF EDUCATION POLICIES.

PROVIDER acknowledges that the Wake County Board of Education has adopted policies governing its relationship with vendors and conduct on School System property and agrees to abide by any and all relevant WCPSS policies during the term of the contract and while on School System property. WCPSS's Provider related policies can be viewed at <https://www.wcpss.net/Page/45862> and are incorporated into this Contract by reference.

SECTION 13. MISCELLANEOUS

- A. Criminal Background Checks.** PROVIDER shall conduct criminal record and background checks on each of its agents or employees who will perform services pursuant to this Agreement on SCHOOL SYSTEM property. PROVIDER agrees that it has or shall complete criminal background checks on any employee prior to assigning that employee to perform any services on SCHOOL SYSTEM property. PROVIDER shall provide documentation to SCHOOL SYSTEM that criminal record and background checks were conducted on each of its agents or employees providing services on SCHOOL SYSTEM property pursuant to this Agreement and shall not assign any worker to provide such services if (1) said worker has been convicted of a felony; (2) said worker has been convicted of any crime, whether misdemeanor or felony, involving violence, illegal drugs, or theft; or (3) said worker has engaged in any crime or conduct indicating that the worker poses a threat to the safety or well-being of SCHOOL SYSTEM's students, personnel, or property, as allowed under federal and state laws. In addition, SCHOOL SYSTEM may conduct additional criminal records checks any time at its sole expense. SCHOOL SYSTEM shall not seek reimbursement of this additional expense from PROVIDER; or employees/students who are the subject of such checks. If SCHOOL SYSTEM exercises this right to conduct additional criminal records checks, PROVIDER agrees to provide within fifteen (15) days of the request the full name, date of birth, and state of residency for the past ten years for any PROVIDER employees providing health services on SCHOOL SYSTEM property pursuant to this Agreement. SCHOOL SYSTEM reserves the right to prohibit any PROVIDER agent or employee from delivering goods or providing services under this Contract if SCHOOL SYSTEM determines, in its sole discretion, that such personnel has not undergone a criminal record and background check in accordance with this Section or the results of such criminal background check may pose a threat to the safety or well-being of students, school personnel, or others.
- B. Sex Offender Registry Checks.** PROVIDER acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. PROVIDER shall conduct, or arrange to have conducted, sexual offender registry checks on each of its employees or agents who will engage in any service on or delivery of goods to SCHOOL SYSTEM property or at a school-system sponsored event pursuant to this Agreement; provided, however, that such checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. Said checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). The parties acknowledge that all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>.

PROVIDER shall provide certification on the form attached to this Agreement that the registry checks were conducted (no sooner than 30 days before the commencement of services) on each of its agents or employees providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. PROVIDER shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the aforementioned registries. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. SCHOOL SYSTEM shall conduct sex offender registry checks for persons placed at SCHOOL SYSTEM sites pursuant to SCHOOL SYSTEM precepting agreements or temporaries placed pursuant to SCHOOL SYSTEM agreements.

- C. Substitution of Personnel/Removal of Personnel from School Site.** Although PROVIDER shall be responsible for all of its agents or employees providing services on SCHOOL SYSTEM property pursuant to this Agreement, the parties acknowledge that services may be provided to SCHOOL SYSTEM students in conjunction with the efforts of school-based and central office staff of SCHOOL SYSTEM. In light of this close working relationship and SCHOOL SYSTEM's responsibility to its staff and students, PROVIDER agent or employee shall be removed upon written notice and explanation of the reason(s) for any such objection to PROVIDER should SCHOOL SYSTEM become dissatisfied with the professionalism or services provided by that PROVIDER agent or employee. Upon receipt of such notice, PROVIDER and SCHOOL SYSTEM shall use good faith efforts to resolve any identified issues with the agent or employee in question through the Dispute Resolution process outlined in section 5. If SCHOOL SYSTEM still deems it necessary to remove the agent or employee from his or her placement after this process, then PROVIDER shall remove the agent or employee from his/her placement in SCHOOL SYSTEM within thirty (30) days of SCHOOL SYSTEM requesting removal in writing. Notwithstanding the foregoing, any agent or employee in SCHOOL SYSTEM's discretion posing a threat to the safety or well-being of students, school personnel, or others shall be removed immediately. Following a request for removal of a PROVIDER agent or employee, PROVIDER will endeavor to replace the agent or employee from the existing PROVIDER workforce if the PROVIDER determines that a qualified current PROVIDER agent or employee is available for such placement.
- D. Access to SCHOOL SYSTEM Property.** SCHOOL SYSTEM retains full control to access to any of its property at all times throughout this Agreement. Except as specifically stated herein, nothing in this Agreement shall be construed to give any PROVIDER agent(s) or employee(s) a right of access to any SCHOOL SYSTEM property without the consent of SCHOOL SYSTEM, its Superintendent, or building-level supervisor.
- E. FERPA; Confidentiality and Maintenance of Records Relating to Individual Students.** The parties agree that if any sharing of confidential student information between SCHOOL SYSTEM and PROVIDER occurs, or if either obtains access to such information, it will be done in a manner consistent with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and its implementing regulations at 34 CFR part 99; the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h and its implementing regulations at 34 CFR part 98; the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. 6501-6506 and its implementing regulations at 16 CFR part 312; N.C. Gen. Stat. §§ 115C-401.1 and 115C-402; SCHOOL SYSTEM Policies 6300 and 6315 and their accompanying regulations and procedures; and other applicable laws, regulations, and policies.

(1) Purpose. SCHOOL SYSTEM is a local education agency that maintains student educational records under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and its implementing regulations at 34 CFR part 99; N.C. Gen. Stat. §§ 115C-401.1 and 115C-402; SCHOOL SYSTEM Policies 6300 and 6315; and other applicable law. PROVIDER is requesting access to certain student data maintained by SCHOOL SYSTEM for the purpose of providing COVID-19 testing services to SCHOOL SYSTEM, as described herein. The purpose of this Section of the Agreement is to set forth the terms and conditions upon which PROVIDER may be granted access to such student and staff data in order to ensure that the student and staff data is used and stored appropriately and in compliance with all applicable federal, state, and local laws, regulations, and policies.

(2) Student/Staff Records and Information. PROVIDER acknowledges that any data shared and released to PROVIDER by SCHOOL SYSTEM (the “Shared Data”) is for the sole purpose of providing educational services to enhance, supplement, and improve instruction for students within SCHOOL SYSTEM. The Shared Data is defined as any data or information shared with PROVIDER pursuant to this Agreement, including but not limited to any de-identified data, aggregated data sets, personally identifiable information (PII) about students or staff, and other student or staff information, including, but not limited to, student data, metadata, and user content. The Shared Data will be used by PROVIDER for the sole purpose stated in section 13.E. (1) above and for improving services under this Agreement. The parties agree that the Shared Data and all rights to the Shared Data, including all intellectual property rights, shall remain the exclusive property of SCHOOL SYSTEM, and that PROVIDER has a limited, nonexclusive, license solely for the purpose of performing its obligations as outlined in this Agreement.

(3) Compliance with Applicable Laws, Policies, and Procedures. To become or remain a recipient of the Shared Data, PROVIDER agrees to comply with the provisions of FERPA, PPRA, COPPA, and all other applicable laws and regulations in all respects. For purposes of this Agreement, FERPA includes 20 U.S.C. 1232g, Chapter 99 of Title 34 of the Code of Federal Regulations, and any SCHOOL SYSTEM policies and procedures implementing these federal laws. PPRA includes 20 U.S.C 1232h, Chapter 98 of Title 34 of the Code of Federal Regulations, and any state law and SCHOOL SYSTEM policies implementing these federal laws. COPPA includes 5 U.S.C. 6501-6505, Chapter 312 of Title 16 of the Code of Federal Regulations, and any state law and SCHOOL SYSTEM policies implementing these federal laws. Nothing in this Agreement may be construed to allow PROVIDER to maintain, use, or disclose any Shared Data in a manner inconsistent with any applicable law, regulation, or policy.

(4) Authorized Use of Shared Data. All services provided by PROVIDER under this Section of this Agreement shall at all times be limited to institutional functions of SCHOOL SYSTEM that could otherwise be provided by a school official and which SCHOOL SYSTEM is “outsourcing” to PROVIDER pursuant to 34 CFR 99.31(a)(1)(B). PROVIDER agrees to use the Shared Data for no other purpose other than those identified in Subsections 13.E. (1) and 13.E. (2) above, of this Agreement. PROVIDER understands that this Agreement does not convey ownership of Shared Data to PROVIDER. PROVIDER specifically acknowledges that PROVIDER’s marketing activities are not an authorized use of the Shared Data.

(5) Procedures for the Maintenance and Security of Shared Data. While in the possession, custody, or control of PROVIDER, all Shared Data shall be stored in a secure environment with access limited to the least number of staff needed to complete the work requested by SCHOOL SYSTEM. PROVIDER shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted data received from, or on behalf of, SCHOOL SYSTEM. Such measures shall include processes for transmission and storage of such data.

- a. PROVIDER agrees that it will protect the Shared Data against loss, destruction, and unauthorized uses or disclosures according to industry best practices and no less rigorously than it protects its own confidential information. Specifically, PROVIDER agrees that all student records and PII obtained in the course of providing services to SCHOOL SYSTEM shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations, and SCHOOL SYSTEM policies, including but not limited to the laws and policies described in Subsection 13.E. (3) above of this Agreement.
- b. For the purposes of ensuring PROVIDER ’s compliance with this Agreement and all applicable state and federal laws, PROVIDER shall designate one or more individuals as the primary data custodian(s) of the data that SCHOOL SYSTEM shares with PROVIDER and shall notify SCHOOL SYSTEM of the name(s) and title(s) of such individual(s) prior to any data being shared. SCHOOL SYSTEM will release all data and information for this

project to the named primary data custodian(s). The primary data custodian(s) shall ensure that the project shall be conducted in a manner that does not permit personal identification of SCHOOL SYSTEM students by anyone other than representatives of PROVIDER who need such information for the purposes described in Subsections 13.E. (1) and 13.E. (2) above of this Agreement. The primary data custodian(s) shall also be responsible for maintaining a log of all data received pursuant to this Agreement and ensuring the timely destruction or return of the Shared Data as required by this Agreement.

- c. PROVIDER shall use industry best practices to protect SCHOOL SYSTEM data from unauthorized physical and electronic access no less rigorously than it protects its own confidential information. All SCHOOL SYSTEM data shall be kept in a secure location preventing access by unauthorized individuals. PROVIDER shall not forward to any person or entity other than SCHOOL SYSTEM any student record or PII, including, but not limited to, the student's identity, without the advance written consent of SCHOOL SYSTEM. PROVIDER agrees to handle any and all Shared Data using appropriate access control and security, including password-protection and encryption in transport and electronic storage, and periodic auditing of data at rest. Data subject to FERPA shall not be emailed in plain text or used for marketing campaigns. PROVIDER will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
- d. Other than PROVIDER's required reporting in accordance with the State Contract for COVID Testing, PROVIDER will maintain an access log delineating the date, time, and identity of any person or entity given access to any Shared Data student records who is not in the direct employ of PROVIDER. No such access shall be granted except in strict compliance with the terms and conditions of this Agreement and applicable law.

(6) Prohibition on Unauthorized Use or Disclosure of Shared Data.

- a. PROVIDER agrees to hold all Shared Data in strict confidence. PROVIDER shall not use or disclose such data received from or on behalf of SCHOOL SYSTEM except as authorized in writing by SCHOOL SYSTEM or as required by law. PROVIDER agrees not disclose any data obtained from SCHOOL SYSTEM in a manner that could identify any individual student to any other entity, attempt to infer or deduce the identity of any individual student based on data provided by SCHOOL SYSTEM, or claim to have identified or deduced the identity of any student based on data provided by SCHOOL SYSTEM.
- b. PROVIDER is prohibited from mining Shared Data for any purposes other than those agreed to in advance writing by SCHOOL SYSTEM. Data mining or scanning of user content for the purpose of advertising and/or marketing to students or their parents is strictly prohibited.
- c. In no event will PROVIDER use any of the Shared Data for its own commercial marketing or advertising purposes, or for the commercial marketing or advertising purposes of any third-party. PROVIDER will not use any Shared Data to advertise or market to SCHOOL SYSTEM students or their parents.
- d. In the event of any unauthorized use or disclosure, PROVIDER shall report the incident to SCHOOL SYSTEM no less than one (1) business day after PROVIDER learns of such use or disclosure. Such report shall identify:
 - i. The nature of the unauthorized use or disclosure,
 - ii. The data used or disclosed,

- iii. Who made the unauthorized use or received the unauthorized disclosure,
- iv. What PROVIDER has done or shall do to mitigate the effects of the unauthorized use or disclosure, and
- v. What corrective action PROVIDER has taken or shall take to prevent future similar unauthorized uses or disclosures.

PROVIDER shall also provide such other information related to the unauthorized use or disclosure that may be reasonably requested by SCHOOL SYSTEM. SCHOOL SYSTEM also may require that PROVIDER provide a written notice of the breach or disclosure, as well as a description of the corrective actions taken, to any SCHOOL SYSTEM student, parent, or employee directly impacted by the breach or disclosure. Any such notice shall be subject to review and approval by SCHOOL SYSTEM.

- e. PROVIDER may use de-identified, aggregated Shared Data for product development and research purposes only as specifically authorized and consented to in advance in writing by SCHOOL SYSTEM. Any such de-identified data will have all direct and indirect personal identifiers removed, including, but not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. PROVIDER agrees not to attempt to re-identify any de-identified data and not to transfer de-identified data to any other party without SCHOOL SYSTEM express written consent.
- f. PROVIDER will not release any research or publications pertaining to SCHOOL SYSTEM's data without SCHOOL SYSTEM's advance written consent.

(7) Employees, Contractors, and Agents. PROVIDER may share any of the Shared Data with its subcontractors only with the advance written permission of SCHOOL SYSTEM. Any such request from PROVIDER shall be in writing and shall identify the person(s) or entit(ies) to whom disclosures will be made and the purposes of the disclosures. Should SCHOOL SYSTEM, in its sole discretion, approve any such request, PROVIDER shall ensure that each approved subcontractor is contractually bound to adhere to all of the terms of this Agreement with respect to its possession and use of any Shared Data and is aware of its obligations under applicable law with regard to the possession, use and re-disclosure of any PII. Any such agreement between PROVIDER and its subcontractor(s) shall be subject to review and approval by SCHOOL SYSTEM before any Shared Data is disclosed to the subcontractor(s). Nothing in this paragraph shall relieve PROVIDER of any its obligations under this Agreement, including its responsibilities to ensure the security of any Shared Data provided by SCHOOL SYSTEM pursuant to this Agreement.

(8) Monitoring and Auditing. Any Shared Data held by PROVIDER will be made available to SCHOOL SYSTEM for review and inspection upon request of SCHOOL SYSTEM. PROVIDER shall cooperate with SCHOOL SYSTEM or with any other person or PROVIDER as directed by SCHOOL SYSTEM, in monitoring, auditing, or investigating activities related to PROVIDER's use and safeguarding of the Shared Data, including but not limited to allowing inspection of the data logs described in Subsections 13.E. (5) c. and 13.E. (5) d. above of this Agreement. SCHOOL SYSTEM and its auditors will maintain the confidentiality of any trade secrets of PROVIDER that may be accessed during an audit conducted under this Agreement.

(9) Term; Post-Termination. This Agreement takes effect upon the date of full execution and continues in full force and effect for so long as PROVIDER has possession, custody, or control services of any of the Shared Data. Upon the termination of the services provided by PROVIDER and/or any other contract, purchase order, agreement or terms of service between SCHOOL SYSTEM and PROVIDER, all Shared Data shall, at SCHOOL SYSTEM's sole option, be destroyed or returned to SCHOOL SYSTEM. No other entity, including any subcontractors of PROVIDER, shall be authorized to continue possessing or using any Shared Data. Any data remaining on any computers, servers, or other technological devices of PROVIDER or its employees, agents, or subcontractors, shall be permanently deleted.

(10) Breach and Default; Indemnification; Remedies.

- a. In the event of a material data or security breach, or, if SCHOOL SYSTEM determines, in its sole discretion, that student or staff information has been mishandled or disclosed in a manner inconsistent with this Agreement, SCHOOL SYSTEM may demand the immediate return or destruction of any and all of the Shared Data.
- b. PROVIDER shall fully indemnify and hold harmless SCHOOL SYSTEM and its past, current and future members, agents, and employees from and against all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever proximately resulting from any material data breach of this Agreement or any unauthorized use or disclosure of the Shared Data by PROVIDER or its subcontractor(s). This section of this Agreement shall survive the expiration or earlier termination of this Agreement.
- c. Nothing in this Agreement shall restrict SCHOOL SYSTEM from seeking any other rights or remedies to which it may be entitled at law or equity.

(11) No Right or Entitlement to Student Data. This Agreement sets out the terms and conditions, under which SCHOOL SYSTEM may, in its sole discretion, provide Shared Data to PROVIDER. Nothing in this Agreement creates any right, title, or interest in PROVIDER to receive any such information.

- F. Restricted Companies Lists.** Provider represents that as of the date of this Contract, Provider is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Provider also represents that as of the date of this Contract, Provider is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.
- G. Anti-Nepotism.** The parties acknowledge that, under N.C. Gen. Stat 115C-47(17a), no PROVIDER employee who is “immediate family” any member of SCHOOL SYSTEM or of any principal or central office staff administrator employed by the Wake County Board of Education may provide services under this Agreement unless that **person’s** placement is specifically approved by SCHOOL SYSTEM in a duly called open-session meeting. For purposes of this provision, “immediate family” means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. The parties will work together in good faith to ensure compliance with this provision. At a minimum, each party will notify the other if it becomes aware of a family relationship covered by this provision.
- H. Compliance with Applicable Laws.** PROVIDER shall comply with all applicable laws, regulations, and SCHOOL SYSTEM policies in providing services under this Agreement. In particular, PROVIDER shall not employ any individuals to provide services to the SCHOOL SYSTEM who are not authorized by federal law to work in the United States. PROVIDER represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. PROVIDER shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Agreement. PROVIDER is responsible for providing affordable health care coverage to all of its full-time employees providing services to the SCHOOL SYSTEM. The definitions of “affordable coverage” and “full-time employee” are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

SECTION 14. NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under the terms of this Agreement shall be sufficient in all respects if given in writing and delivered in person, by confirmed facsimile transmission, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following address:

If to PROVIDER:
Katie Shelton
General Counsel
8461 Garvey Drive
Raleigh, NC 27616
(919) 351-6256
kshelton@makomedical.com

If to SCHOOL SYSTEM:
Cathy Q. Moore
Superintendent
5625 Dillard Drive
Cary, NC 27518
(919) 431-7400
cqmoore@wcpss.net

SECTION 15. SEVERABILITY

If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

SECTION 16. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

SECTION 17. GOVERNING LAW

The parties acknowledge that this Agreement shall be governed by the laws of the State of North Carolina.

SECTION 18. AMENDMENT

This contract may be amended only by written amendments duly executed by and between SCHOOL SYSTEM and PROVIDER.

SECTION 19. ENTIRE AGREEMENT

The terms and provisions herein contained constitute the entire agreement by and between PROVIDER and SCHOOL SYSTEM and shall supersede all previous communications, representations or agreements, either oral or written between the parties hereto with respect to the subject matter hereof.

SECTION 20. COUNTERPARTS AND EXECUTION

This Contract may be executed in any number of counterparts, each of which shall be deemed an original but all of which together will constitute one and the same agreement. The Parties agree that scanned, faxed, and/or electronically transmitted copies of this Contract will have the same validity and force as an original, and that scanned, faxed, or electronic signatures shall be deemed original signatures for purposes of this Contract and given the same legal effect as original signatures.

SECTION 21. AUTHORITY

The person(s) executing this Agreement on behalf of PROVIDER have authority to do so as an official, binding act of PROVIDER.

SECTION 22. EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be November 2, 2021.

IN WITNESS WHEREOF, the parties hereto have agreed and executed this Agreement.

WAKE COUNTY BOARD OF EDUCATION

MAKO MEDICAL LABORATORIES, LLC

By: _____
Keith Sutton, Chair

By: _____
Josh Arant, Chief Operating Officer

Date: _____

Date: _____

Attested By: _____
Cathy Q. Moore, Superintendent

Date: _____

The person responsible for monitoring MOA performance for WCPSS is Paul Koh, Assistant Superintendent for Student Support Services, and for Provider is Max Forest.

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act. G.S. 115C-441(a).

DocuSigned by:
Mark B. Winters 11/4/2021
A6D8D05FC819464...
Finance Officer Date

Sexual Offender Registry Check Certification Form

PLEASE SUBMIT THIS FORM TO YOUR OWNER'S REPRESENTATIVE

Project Name: _____ Contract: _____

Check the appropriate box to indicate the type of check:

___ Initial ___ Supplemental ___ Annual

I, _____ (insert name), _____ (insert title) of _____ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry (**Note: all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>**). I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to SCHOOL SYSTEM upon request. I specifically acknowledge that SCHOOL SYSTEM retains the right to audit these records to ensure compliance with this section at any time in SCHOOL SYSTEM's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names

Job Title

- | | | |
|----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |
| 7. | _____ | _____ |

I attest that the forgoing information is true and accurate to the best of my knowledge.

_____ (print name)

_____ (signature / date)

**Attachment A
Sexual Offender Registry Check Certification Form**

PLEASE SUBMIT THIS FORM TO YOUR OWNER'S REPRESENTATIVE

Project Name: COVID Testing Contract: Mako Medical

Check the appropriate box to indicate the type of check:


Initial Supplemental Annual

I, Max Forest (insert name), Program Director (insert title) of Mako Medical Laboratories (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry (Note: all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>). I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

In accordance with the requirement set forth above by WCPSS, MAKO Medical will submit entries for the Sexual Offender Registry Check Certification Form on a rolling basis as the initial representatives, and additional representatives that will work on behalf of MAKO Medical within WCPSS schools are hired.

Contractual Personnel Names	Job Title
1. <u>Max Forest</u>	<u>Program Director</u>
2. <u>Anna Dillon</u>	<u>Program Manager</u>
3. <u>Harrison Grayson</u>	<u>Ast. Program Manager</u>
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____

I attest that the forgoing information is true and accurate to the best of my knowledge.

Max Forest (print name)
 / 11/2/21 (signature / date)



ADDITIONAL REMARKS SCHEDULE

AGENCY Jones Insurance Agency, Inc.		NAMED INSURED Mako Medical Laboratories, LLC 8461 Garvey Drive Raleigh NC 27616	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

requires such status. Umbrella is follow form and extends over Employers Liability, General Liability, and Automobile Liability policies. The Professional Liability policy includes an endorsement that provides additional insured status for ongoing operations to the certificate holder and other entities when there is a written "insured contract" between named insured and certificate holder that requires such status.
 Additional insured for general liability: Wake County Board of Education.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/31/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Jones Insurance Agency, Inc. 820 Benson Road Garner NC 27529	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">CONTACT NAME: Lori Corona, CISR Elite</td> </tr> <tr> <td>PHONE (A/C No. Ext): 919-772-0233</td> <td>FAX (A/C, No): 919-779-4025</td> </tr> <tr> <td colspan="2">E-MAIL ADDRESS: LoriC@jones-insurance.com</td> </tr> <tr> <td colspan="2" style="text-align: center;">INSURER(S) AFFORDING COVERAGE</td> </tr> <tr> <td>INSURER A : Westchester Surplus Lines Insurance</td> <td style="text-align: right;">NAIC # 10172</td> </tr> <tr> <td>INSURER B : AXIS Surplus Insurance Company</td> <td style="text-align: right;">26620</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	CONTACT NAME: Lori Corona, CISR Elite		PHONE (A/C No. Ext): 919-772-0233	FAX (A/C, No): 919-779-4025	E-MAIL ADDRESS: LoriC@jones-insurance.com		INSURER(S) AFFORDING COVERAGE		INSURER A : Westchester Surplus Lines Insurance	NAIC # 10172	INSURER B : AXIS Surplus Insurance Company	26620	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
CONTACT NAME: Lori Corona, CISR Elite																					
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INSURER B : AXIS Surplus Insurance Company	26620																				
INSURER C :																					
INSURER D :																					
INSURER E :																					
INSURER F :																					
INSURED Mako Medical Laboratories, LLC 8461 Garvey Drive Raleigh NC 27616	MAKOM-1																				

COVERAGES **CERTIFICATE NUMBER: 1061534847** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A B	Excess Cyber, ClaimsMade/Reported Excess Auto Liability			G72539199 001 P-001-000689685-01	8/25/2021 8/25/2021	8/25/2022 8/25/2022	Each Claim/Aggregate Combined Single Limit 5,000,000 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

See page 1	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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